IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 569

JOHN R. EARLEY, ET AL., *Appellants*,

v.

JOAN DiCENSO, ET AL., *Appellees*.

No. 570

WILLIAM P. ROBINSON, JR., ET AL., *Appellants*,

v.

JOAN DiCENSO, ET AL., *Appellees*.

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APPENDIX

Relevant Docket Entries

1969

December 16—Complaint filed together with appearance of Milton Stanzler, Esq., for plaintiffs.

December 23—Designation by Chief Judge Bailey Aldrich of the Honorable Frank M. Coffin, United States Circuit Judge for the First Circuit and the Honorable Hugh H. Bownes, United States District Judge for the District of New Hampshire, to sit with the Honorable Raymond J. Pettine, United States District Judge for the District of Rhode Island received and filed.

1970

January 5—Answer filed.

January 5—Defendants' Motion to Dismiss filed.

January 21—Hearing of Request for Temporary Restraining Order by plaintiffs. Allan M. Shine, Esq., appearance for plaintiffs filed. W. Slater Allen, Jr., Esq., argues against Restraining Order. Mr. Shine argues for. Mr. Shine to file memo in answer to memo of Mr. Allen. Conference to be held in chambers prior to February 1, 1970. Passed. Temporary Restraining Order not to be issued at this time. Affidavit of Helen King read by court.

February 9—Hearing on Motion for Temporary Restraining Order. Mr. Shine argues. Mr. Allen argues. Two defendants' exhibits. Written ruling by Friday. Mr. Shine to answer defendants' memorandum by Wednesday, should he decide to answer it. Order to be entered allowing Richard P. McMahon, Esq., to intervene.

February 11—Motion to Intervene as defendants filed.

February 11—Order [allowing intervention] entered and filed.

February 11—Answer of the Intervenor-Defendants filed.

February 13—Opinion filed.

February 18—Temporary Restraining Order entered and filed.

March 4—Answer to Amended Complaint filed by Defendants Robinson, Hawksley and Hill.

March 4—Motion to Dismiss filed by defendants.

March 11—Answer of the Intervenor-Defendants to Amended Complaint filed.

March 11—Order filed granting Plaintiffs' Motion to Amend Complaint.

March 18—Case goes to trial. Judges Frank M. Coffin, Hugh M. Bownes, and Raymond J. Pettine. Appearance of Leo Pfeffer, Esq., for plaintiffs filed. W. Slater Allen, Esq., for State officials. Jeremiah C. Collins, Esq.. for defendant-intervenors. Mr. Allen makes Defendants' Motion to Dismiss. Mr. Pfeffer argues in opposition. Decision reserved. Mr. Stanzler presents certain stipulations. One plaintiffs' witness. Five defendants' witnesses. Twenty-six plaintiffs' exhibits. Two stipulations entered as defendants' exhibits: stipulation "A", plaintiffs' stipulation; stipulation "B", intervenors.

March 19—Transcript of proceedings on March 17, 1970, filed by court reporter.

March 19—Trial continues. Summation by Mr. Collins for intervenor-defendants. Summation by Mr. Allen for defendants. Summation for plaintiffs by Mr. Pfeffer. Briefs to be submitted by April 6, 1970. Amicus curiae to submit brief. Appearance of Franklin C. Salisbury, Esq., as amicus curiae filed.

March 20—Transcript of proceedings on March 19, 1970, filed by court reporter.

March 20—Order entered and filed vacating the Temporary Restraining Order heretofore entered in this action, etc.

June 15—Opinion filed by Judge Coffin and Judge Bownes.

June 15—Opinion filed by Judge Pettine concurring in result, concurring in part and dissenting in part with the Opinion of the Court.

June 17—Judgment and Order entered and filed denying defendants' Motion to Dismiss; declaring R.I. Public Law C.246 (1969) to be unconstitutional, etc. and permanently enjoining defendants and their agents from making any payments or disbursements under R.I. Public Law C.246 (1969) to teachers employed by denominational schools.

June 17—Defendants' Application for Stay filed.

June 17—Order entered and filed denying Application for Stay.

June 22—Transcript of hearing on June 17, 1970, filed by court reporter.

June 26—Erratum on Opinion of June 15, 1970, filed.

June 26—Notice of Appeal to the Supreme Court of the United States filed by intervenor-defendants.

June 26—Notice of Appeal to the Supreme Court of the United States filed by defendants.

June 26—Record on Appeal together with certified copy of docket entries mailed to Clerk, Supreme Court of the United States, Washington, D. C.

July 1—Certified copy of Order granting a stay pending the timely filing of an apeal, etc., received from Supreme Court of the United States and filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C. A. 4239

JOAN DICENSO, DONALD R. HILL, ANN CLANTON, ALICE CHASE, HELEN KING, AND MARIE FRIEDEL, *Plaintiffs.*

v.

WILLIAM P. ROBINSON, JR., Commissioner of Education of the State of Rhode Island, RAYMOND H. HAWKSLEY, General Treasurer of the State of Rhode Island, and CHARLES W. HILL, Controller of the State of Rhode Island, *Defendants.*

Complaint

I. STATEMENT AS TO JURISDICTION

1. This is a civil action brought by the Plaintiffs, on their own behalf and on behalf of all others similarly situated, for a temporary and permanent injunction against the allocation and use of funds of the State of Rhode Island for the support of, or to finance, in whole or in part, (a) sectarian schools and (b) any private schools including sectarian schools whose policies and practices, by purpose or effect, exclude from admission or otherwise discriminate against persons by reason of religion, and to declare such use of funds as violative of the First and Fourteenth Amendments to the Federal Constitution.

2. Jurisdiction is conferred upon this Court pursuant to Title 28, U.S. Code, Sections 1331, 2281, 2284, 2201 and 2202.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand ($10,000.00) Dollars, as more fully appears hereinafter.

4. Each of the Plaintiffs is a citizen and taxpayer in the United States and in the State of Rhode Island and is a resident in the District of Rhode Island.

5. Defendant William P. Robinson, Jr., is a Commissioner of Education of the State of Rhode Island and is sued herein in that capacity. Defendant Raymond H. Hawksley is General Treasurer of the State of Rhode Island and is sued herein in that capacity. Defendant Charles W. Hill is Controller of the State of Rhode Island and is sued herein in that capacity.

II. Factual Allegations

6. On May 16, 1969, the Governor of the State of Rhode Island approved H.1765 A, being Chapter 246 of the Public Laws of the State of Rhode Island (1969) and entitled "An Act providing salary supplements to non-public school teachers and in amendment of and in addition to Title 16 of the General Laws entitled 'Education', as amended." The Act became effective on July 1, 1969, and is hereinafter referred to as the "Act".

7. The Act, *inter alia*, purports to authorize payment by the State of Rhode Island of a salary supplement to specified teachers in non-public schools in an amount equal to 15% of such teachers' salary, upon the terms and conditions set forth therein, and authorizes the Defendant Commissioner of Education of the State of Rhode Island to promulgate regulations for the purpose of carrying out said Act.

8. Said Act appropriated out of funds in the General Treasury of the State of Rhode Island the sum of Three Hundred Seventy-Five Thousand ($375,000.00) Dollars for the purpose of carrying out the provisions of said Act and authorized Defendant Controller of the State of Rhode Island, to draw orders upon the General Treasurer of the State of Rhode Island, for the payment of such sums as purportedly authorized to be paid by the Act.

9. During the 1969 Session of the Rhode Island Assembly, numerous spokesmen for at least one religious body and

organizations associated with at least one religious body strongly and publicly called for and supported legislation giving state financial assistance to church-operated schools.

10. The Act will primarily benefit parochial elementary schools in Rhode Island because approximately 96 per cent of the non-public elementary school students in this State are enrolled in Roman Catholic parochial schools alone.

11. The terms, conditions and requirements for eligibility for payment of such salary supplements under the Act are such that substantially all payments which are payable as salary supplements will be made to teachers in religious-oriented schools and that by and large no non-religious private schools in Rhode Island are eligible for such salary supplement payments to their teachers.

12. The Act on its face authorizes payments which support sectarian educational institutions, which (a) are controlled by churches or religious organizations, (b) have as their purpose the teaching, propagation and promotion of a particular religious faith and (c) conduct their operations, curricula and programs to fulfill that purpose.

13. The Act does not prohibit in those schools or classes for which aid is provided the existing practice of the wearing of religious garb by teachers, the use of religious symbols in classrooms and in halls and the encouragement of prayers or other religious observances. The regulations adopted by the Commissioner of Education do not in any manner whatsoever prohibit any of the foregoing conduct.

14. The education and the educational process in parochial and diocesan schools is conducted in an atmosphere conducive to the promotion of religious tenets and doctrine, in which it is impossible to separate secular from sectarian in both subject matter and method of instruction.

15. Said Act contains a legislative finding and declaration of policy that it is intended to "assist non-public schools".

16. Subsequent to the approval of the Act by the Governor of the State of Rhode Island, the Defendant Commissioner of Education of the State of Rhode Island, enacted and adopted regulations governing payment of salary supplements to non-public school teachers, which regulations provided, *inter alia,* that "an eligible teacher desiring to apply for salary supplement shall apply annually in the month of September upon forms prescribed by the Commissioner of Education."

17. As of December 10, 1969, approximately two hundred (200) teachers had applied to the Commissioner of Education for a salary supplement under said Act and upon information and belief, approximately all of said applicants teach at religious-oriented schools.

18. The Act authorizes payments to non-public schools whose policies and practices, by purpose or effect exclude or otherwise discriminate against students, teachers or administrators in enrollment or employment by reason of religion.

19. Unless enjoined by this Court, the Defendants will approve and make payments of the aforedescribed salary supplements as authorized by said regulations, which direct that salary supplements be paid in the months of February and June, and such said Defendants in the future will continue to pay large sums of public funds to effectuate the Act.

III. Causes of Action

20. *First Count:* The Act on its face and as applied is a law respecting an establishment of religion in violation of the First Amendment to the United States Constitution

as made applicable to the States by the Fourteenth Amendment in that it (a) provides for direct financial aid out of state funds which support sectarian schools, (b) finances and participates in the blending of sectarian and secular instruction, (c) has as its purpose the advancement of religion, and (d) has as its primary effect the advancement of religion.

21. *Second Count:* The Act on its face and as applied prohibits the free exercise of religion on the part of the individual Plaintiffs by reason of the fact that it constitutes compulsory taxation for the support of religion or religious educational institutions.

IV. Other Allegations

22. This suit involves a genuine case or controversy between the plaintiffs and the defendants.

23. The Plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

24. The Plaintiffs pray that the following relief be granted:

(1) That a three-judge court be convened as provided in Title 28, Sections 2281 and 2283 of the United States Code to declare the Act unconstitutional.

(2) That the defendants be enjoined permanently from approving payment of any funds purportedly authorized under the Act and be permanently enjoined from making any payments purportedly authorized under the Act.

(3) That a preliminary injunction pending the trial of the issues be granted to the plaintiffs against the defendants for the relief set forth herein.

(4) That the plaintiffs be granted such other and further relief as the Court may deem just and proper.

By their attorneys,

/s/ William J. Sheehan,
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/s/ Benjamin A. Smith,
Benjamin A. Smith, Esq.
314 Howard Building
Providence, Rhode Island 02903

/s/ Harold E. Adams, Jr.,
Harold E. Adams, Jr., Esq.
302 Union Trust Building
Providence, Rhode Island 02903

/s/ Milton Stanzler,
Milton Stanzler, Esq.
626 Industrial Bank Building
Providence, Rhode Island 02903

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Answer of Defendants William P. Robinson, Jr., Commissioner of Education of the State of Rhode Island, Raymond H. Hawksley, General Treasurer of the State of Rhode Island, and Charles W. Hill, Controller of the State of Rhode Island.

Now come the Defendants in the above entitled matter and answer as follows:

FIRST DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Court lacks subject matter jurisdiction of the within complaint as the Plaintiffs have no standing to maintain this action.

THIRD DEFENSE

The Court lacks jurisdiction of the within matter as the amount of controversy is less than $10,000.00.

FOURTH DEFENSE

The Defendants deny that the complaint states facts under which the Court could properly form a Rule 23 class.

FIFTH DEFENSE

1. The Defendants admit the allegations contained in paragraphs 5, 6, 8, 16, 17 and 19 of the Complaint.

2. Defendants deny the allegations contained in Paragraph 2, 3, 11, 12, 14, 20, 21 and 22 of the Complaint.

3. The Defendants have insufficient information on which to form a belief as to the truth of the allegations contained in paragraphs 4 and 9 of the complaint and so therefore

neither admit nor deny the same but leave the Plaintiffs to their proof.

4. Defendants answer the allegation in paragraph 7 of the complaint by alleging that the act purports to pay teachers as alleged except that the Defendants are unable to respond to the word "specified" contained in said paragraph and further allege that the act speaks for itself.

5. The Defendant answers the allegations contained in paragraph 13 of the complaint by alleging that the act speaks for itself.

6. Defendants answer paragraph 18 of the complaint by alleging that the act authorizes payments to teachers, and denies that the act authorizes payments to schools.

7. Defendants answer paragraph 1 and 23 of the Complaint by alleging that these plaintiffs state legal conclusions and require no answer.

The Defendants admit that more than 90% of the non-public elementary school students in this State are enrolled in Roman Catholic Parochial Schools; the Defendants have insufficient information to form a belief as to the truth of the allegations of paragraph 10 of the complaint that 96% are so enrolled, and leave the Plaintiffs to their proof. The Defendants deny the conclusary allegations of Paragraph 10, in that such allegations, if true, are neither relevant nor pertinent.

WHEREFORE the Defendants pray that the within complaint be denied and dismissed and that the Defendants have the costs of the action.

William P. Robinson, Jr. et als.
by their attorney

Herbert F. DeSimone
Attorney General

/s/ W. SLATER ALLEN, JR.
W. Slater Allen, Jr.
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Order

This matter came on for consideration at this term upon the motion of John R. Earley, William A. Hanson, Madelyn Law, Ralph F. McElroy, Alan E. Moss, Frank J. Shealey, Phyllis A. Walter, Margaret-Mary Cummiskey, and Cornelius A. Cummiskey for leave to intervene in this matter and upon consideration thereof it appearing that the proposed intervenors meet the requirements of Rule 24 of the Federal Rules of Civil Procedure and it further appearing to the Court that all parties consent thereto, it is by the Court this 11th day of February, 1970,

ORDERED that the motion of John R. Earley, William A. Hanson, Madelyn Law, Ralph F. McElroy, Alan E. Moss, Frank J. Shealey, Phyllis A. Walter, Margaret-Mary Cummiskey and Cornelius A. Cummiskey are hereby given leave to intervene in this matter and are hereby made parties thereto, and the clerk is hereby directed to file the answer attached to motion in the same manner and with

like effect as if intervenors had been made original parties to this action.

RAYMOND J. PETTINE
United States District Judge
Feb. 11/70

Assented To

/s/ ALLAN M. SHINE
Allan M. Shine, Esquire
Winograd, Winograd & Marcus
915 Hospital Trust Building
Providence, Rhode Island
Attorney for Plaintiffs and on behalf
of all other counsel for Plaintiffs.

/s/ W. SLATER ALLEN, JR.
W. Slater Allen, Jr., Esquire
Assistant Attorney General for the
State of Rhode Island
411 County Courthouse
Providence, Rhode Island
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Answer of Intervenor-Defendants

First Defense

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

Second Defense

The relief sought by the plaintiffs would infringe upon the free exercise of the religion of those intervenors who are the parents of children enrolled in Roman Catholic non-public schools in Rhode Island, as well as the free exercise of the religion of their children, and thereby deny those intervenors, their children, and the class that those intervenors represent the rights secured to them by the First Amendment of the United States Constitution.

Third Defense

The relief sought by the plaintiffs would constitute an impermissible classification based upon religious ground and would thereby deny to those intervenors who are teachers and to the class they represent the equal protection of the laws secured to them by the Due Process Clause of the Fifth Amendment of the United States Constitution.

Fourth Defense

First: Intervenors admit that Paragraph 1 of the complaint sets forth plaintiffs' description of their legal claims, and as such, requires no response.

Second: Intervenors admit the allegations of Paragraph 2 of the complaint.

Third: Intervenors admit the allegations of Paragraph 3 of the complaint.

FOURTH: Intervenors allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the complaint, and intervenors demand strict proof thereof.

FIFTH: Intervenors admit the allegations contained in Paragraph 5 of the complaint.

SIXTH: Intervenors admit the allegations contained in Paragraph 6 of the complaint.

SEVENTH: Intervenors answer the allegations of Paragraphs 7 and 8 of the complaint by alleging that the statute in question speaks for itself.

EIGHTH: Intervenors allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the complaint and intervenors demand strict proof thereof.

NINTH: Intervenors deny the allegations contained in Paragraph 10 of the complaint.

TENTH: Intervenors deny the allegations contained in Paragraph 11 of the complaint.

ELEVENTH: Intervenors deny the allegations contained in Paragraph 12 of the complaint.

TWELFTH: Intervenors answer the allegations of Paragraph 13 of the complaint by alleging that the statute in question speaks for itself.

THIRTEENTH: Intervenors deny the allegations contained in Paragraph 14 of the complaint.

FOURTEENTH: Intervenors deny the allegations contained in Paragraph 15 of the complaint.

FIFTEENTH: Intervenors admit the allegations contained in Paragraph 16 of the complaint.

SIXTEENTH: Intervenors allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the complaint and intervenors demand strict proof thereof.

SEVENTEENTH: Intervenors deny the allegations contained in Paragraph 18 of the complaint.

EIGHTEENTH: Intervenors admit the allegations in Paragraph 19 of the complaint.

NINETEENTH: Intervenors deny the allegations contained in Paragraphs 20 and 21 of the complaint.

TWENTIETH: Intervenors admit the allegations contained in Paragraph 22 of the complaint.

TWENTY-FIRST: Intervenors deny the allegations contained in Paragraph 23 of the complaint.

WHEREFORE, intervenors demand judgment dismissing the complaint and providing for all appropriate relief.

By their attorneys,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Amended Complaint

I. STATEMENT AS TO JURISDICTION

1. This is a civil action brought by the Plaintiffs, on their own behalf and on behalf of all others similarly situated, for a temporary and permanent injunction against the allocation and use of funds of the State of Rhode Island for the support of, or to finance, in whole or in part, (a) sectarian schools and (b) any private schools including sectarian schools whose policies and practices, by purpose or effect, exclude from admission or otherwise discriminate against persons by reason of religion, and to declare such use of funds as violative of the First and Fourteenth Amendments to the Federal Constitution.

2. Jurisdiction is conferred upon this Court pursuant to Title 28, U.S. Code, Sections 1331, 1343, 2281, 2284, 2201 and 2202, and Title 42, U.S. Code, Section 1983 *et seq.*

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand ($10,000.00) Dollars, as more fully appears hereinafter.

4. Each of the Plaintiffs is a citizen and taxpayer in the United States and in the State of Rhode Island and is a resident and qualified legal voter in the State of Rhode Island. Plaintiffs Donald R. Hill and Alice Chase are parents of children regularly registered in and attending the elementary or secondary grades in the public schools of Rhode Island.

5. Defendant William P. Robinson, Jr., is Commissioner of Education of the State of Rhode Island and is sued herein in that capacity. Defendant Raymond H. Hawksley is General Treasurer of the State of Rhode Island and is

sued herein in that capacity. Defendant Charles W. Hill is Controller of the State of Rhode Island and is sued herein in that capacity.

II. Factual Allegations

6. On May 16, 1969, the Governor of the State of Rhode Island approved H. 1765 A, being Chapter 246 of the Public Laws of the State of Rhode Island (1969) and entitled "An Act providing salary supplements to non-public school teachers and in amendment of and in addition to Title 16 of the General Laws entitled 'Education', as amended." The Act became effective on July 1, 1969, and is hereinafter referred to as the "Act."

7. The Act, *inter alia,* purports to authorize payment by the State of Rhode Island of a salary supplement to specified teachers in non-public schools in an amount equal to 15% of such teachers' salary, upon the terms and conditions set forth therein, and authorizes the Defendant Commissioner of Education of the State of Rhode Island to promulgate regulations for the purpose of carrying out said Act.

8. Said Act appropriated out of funds in the General Treasury of the State of Rhode Island the sum of Three Hundred Seventy-Five Thousand ($375,000.00) Dollars for the purpose of carrying out the provisions of said Act and authorized Defendant Controller of the State of Rhode Island, to draw orders upon the General Treasurer of the State of Rhode Island, for the payment of such sums as purportedly authorized to be paid by the Act.

9. During the 1969 Session of the Rhode Island Assembly, numerous spokesmen for at least one religious body and organizations associated with at least one religious body strongly and publicly called for and supported legislation giving state financial assistance to church-operated schools.

10. The Act will primarily benefit parochial elementary schools in Rhode Island because approximately 96 per cent

of the non-public elementary school students in this State are enrolled in Roman Catholic parochial schools alone.

11. The terms, conditions and requirements for eligibility for payment of such salary supplements under the Act are such that substantially all payments which are payable as salary supplements will be made to teachers in religious-oriented schools and that by and large no non-religious private schools in Rhode Island are eligible for such salary supplement payments to their teachers.

12. The Act on its face authorizes payments which support sectarian educational institutions, which (a) are controlled by churches or religious organizations, (b) have as their purpose the teaching, propagation and promotion of a particular religious faith and (c) conduct their operations, curricula and programs to fulfill that purpose.

13. The Act does not prohibit in those schools or classes for which aid is provided the existing practice of the wearing of religious garb by teachers, the use of religious symbols in classrooms and in halls and the encouragement of prayers or other religious observances. The regulations adopted by the Commissioner of Education do not in any manner whatsoever prohibit any of the foregoing conduct.

14. The education and the educational process in parochial and diocesan schools is conducted in an atmosphere conducive to the promotion of religious tenets and doctrine, in which it is impossible to separate secular from sectarian in both subject matter and method of instruction.

15. Said Act contains a legislative finding and declaration of policy that it is intended to "assist non-public schools".

16. Subsequent to the approval of the Act by the Governor of the State of Rhode Island, the Defendant Commissioner of Education of the State of Rhode Island, enacted and adopted regulations governing payment of salary supplements to non-public school teachers, which

regulations provided, *inter alia,* that "an eligible teacher desiring to apply for salary supplement shall apply annually in the month of September upon forms prescribed by the Commissioner of Education."

17. As of December 10, 1969, approximately two hundred (200) teachers had applied to the Commissioner of Education for a salary supplement under said Act and upon information and belief, all of said applicants teach at religious-oriented schools.

18. The Act authorizes payments which support non-public schools whose policies and practices, by purpose or effect exclude or otherwise discriminate against students, teachers or administrators in enrollment or employment by reason of religion.

19. Unless enjoined by this Court, the Defendants will approve and make payments of the aforedescribed salary supplements as authorized by said regulations, which direct that salary supplements be paid in the months of February and June, and such said Defendants in the future will continue to pay large sums of public funds to effectuate the Act.

III. Causes of Action

20. *First Count:* The Act on its face and as applied is a law respecting an establishment of religion in violation of the First Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment in that it (a) provides for direct financial aid out of state funds which support sectarian schools, (b) finances and participates in the blending of sectarian and secular instruction, (c) has as its purpose the advancement of religion, and (d) has as its primary effect the advancement of religion.

21. *Second Count:* The Act on its face and as applied prohibits the free exercise of religion on the part of the

individual Plaintiffs by reason of the fact that it constitutes compulsory taxation for the support of religion or religious educational institutions.

IV. Other Allegations

22. This suit involves a genuine case or controversy between the plaintiffs and the defendants.

23. The Plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

24. The Plaintiffs pray that the following relief be granted:

(1) That a three-judge court be convened as provided in Title 28, Sections 2281 and 2283 of the United States Code to declare the Act unconstitutional.

(2) That the defendants be enjoined permanently from approving payment of any funds purportedly authorized under the Act and be permanently enjoined from making any payments purportedly authorized under the Act.

(3) That a preliminary injunction pending the trial of the issues be granted to the plaintiffs against the defendants for the relief set forth herein.

(4) That the plaintiffs be granted such other and further relief as the Court may deem just and proper.

By their attorneys,

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Milton Stanzler, Esq.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Answer of Defendants William P. Robinson, Jr., Commissioner of Education of the State of Rhode Island, Raymond H. Hawksley, General Treasurer of the State of Rhode Island, and Charles W. Hill, Controller of the State of Rhode Island to the Amended Complaint

Now come the Defendants Robinson, Hawksley and Hill, in the above-entitled matter and answer as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Court lacks subject matter jurisdiction of the within Amended Complaint as the Plaintiffs lack standing to maintain the within action.

THIRD DEFENSE

To the extent jurisdiction of the Court herein depends on 28 U.S.C.A., sec. 1331, the Amended Complaint is faulty as the amount in controversy is less than $10,000.00.

FOURTH DEFENSE

The Amended Complaint states insufficient facts for the Court to form a Rule 23 class.

FIFTH DEFENSE

1. Defendants deny that jurisdiction is conferred on this Court by 28 U.S.C., sec. 1331 and 42 U.S.C., sec. 1983 et seq.

2. Defendants neither admit nor deny that plaintiffs are registered to vote in Rhode Island, but put the plaintiffs on

their proof; defendants further deny that registration to vote in Rhode Island confers status or standing upon plaintiffs before this Court.

3. Defendants neither admit nor deny the Plaintiffs Hill and Chase are parents, nor that any such children attend public schools, but leave the plaintiffs to their proof; defendants further deny that such facts, if proven, confer standing or status upon plaintiffs before this Court.

4. The Defendants admit the allegations contained in paragraphs 5, 6, 8, 16 and 19 of the Complaint.

5. Defendants deny the allegations contained in Paragraph 2, 3, 11, 12, 14, 20, 21 and 22 of the Complaint.

6. Defendants have insufficient information on which to form a belief as to the status of the plaintiffs as citizens or taxpayers of Rhode Island, and so neither admit nor deny the same, but leave Plaintiffs to their proof; Defendants further deny that such facts, if proven, confer standing on Plaintiffs before this Court.

7. Defendants deny the allegations of paragraph 9 of the Amended Complaint, and further deny their relevance or competence.

8. Defendants answer the allegation in paragraph 7 of the complaint by alleging that the act purports to pay teachers as alleged except that the Defendants are unable to respond to the word "specified" contained in said paragraph and further allege that the act speaks for itself.

9. The Defendants answer the allegations contained in Paragraph 13 of the Complaint by alleging that the act speaks for itself.

10. Defendants answer the allegations contained in paragraph 18 of the Amended Complaint by alleging that the act authorizes payments to teachers, and deny that the payments thereby authorized support any school.

Defendants further deny that any school whose teachers may receive payments under the act discriminates against any teacher or student on a religious basis.

11. Defendants answer paragraphs 1 and 23 of the Complaint by alleging that these Plaintiffs state legal conclusions and require no answer.

12. Defendants deny the allegations of paragraph 17 of the Amended Complaint, and further deny the competence of the facts therein alleged.

13. The Defendants admit that more than 90% of the non-public elementary school students in this State are enrolled in Roman-Catholic Parochial Schools; the Defendants have insufficient information to form a belief as to the truth of the allegations of paragraph 10 of the complaint that 96% are so enrolled, and leave the Plaintiffs to their proof. The Defendants deny the conclusary allegations of Paragraph 10, in that such allegations, if true, are neither relevant nor pertinent.

Wherefore, the Defendants pray that the within complaint be denied and dismissed and that the Defendants have the costs of the action.

William P. Robinson, Jr., et als
by their attorney
Herbert F. De Simone
Attorney General

W. Slater Allen, Jr.
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Answer of the Intervenor-Defendants to Amended Complaint

FIRST DEFENSE

Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The relief sought by the plaintiffs would infringe upon the free exercise of the religion of those intervenors who are the parents of children enrolled in Roman Catholic non-public schools in Rhode Island, as well as the free exercise of the religion of their children, and thereby deny those intervenors, their children, and the class that those intervenors represent the rights secured to them by the First Amendment of the United States Constitution.

THIRD DEFENSE

The relief sought by the plaintiffs would constitute an impermissible classification based upon religious ground and would thereby deny to those intervenors who are teachers and to the class they represent the equal protection of the laws secured to them by the Due Process Clause of the Fifth Amendment of the United States Constitution.

FOURTH DEFENSE

FIRST: Intervenors admit that Paragraph 1 of the Amended Complaint sets forth plaintiffs description of their legal claims, and as such, requires no response.

SECOND: Intervenors admit the allegations of Paragraph 2 of the Amended Complaint.

THIRD: Intervenors admit the allegations of Paragraph 3 of the Amended Complaint.

FOURTH: Intervenors allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Amended Complaint, and intervenors demand strict proof thereof.

FIFTH: Intervenors admit the allegations contained in Paragraph 5 of the Amended Complaint.

SIXTH: Intervenors admit the allegations contained in Paragraph 6 of the Amended Complaint.

SEVENTH: Intervenors answer the allegations of Paragraphs 7 and 8 of the Amended Complaint by alleging that the statute in question speaks for itself.

EIGHTH: Intervenors allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Amended Complaint, and intervenors demand strict proof thereof.

NINTH: Intervenors deny the allegations contained in Paragraph 10 of the Amended Complaint.

TENTH: Intervenors deny the allegations contained in Paragraph 11 of the Amended Complaint.

ELEVENTH: Intervenors deny the allegations contained in Paragraph 12 of the Amended Complaint.

TWELFTH: Intervenors answer the allegations of Paragraph 13 of the Amended Complaint by alleging that the statute in question speaks for itself.

THIRTEENTH: Intervenors deny the allegations contained in Paragraph 14 of the Amended Complaint.

FOURTEENTH: Intervenors deny the allegations contained in Paragraph 15 of the Amended Complaint.

FIFTEENTH: Intervenors admit the allegations contained in Paragraph 16 of the Amended Complaint.

SIXTEENTH: Intervenors allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Amended Complaint, and intervenors demand strict proof thereof.

SEVENTEENTH: Intervenors deny the allegations contained in Paragraph 18 of the Amended Complaint.

EIGHTEENTH: Intervenors admit the allegations contained in Paragraph 19 of the Amended Complaint.

NINETEENTH: Intervenors deny the allegations contained in Paragraphs 20 and 21 of the Amended Complaint.

TWENTIETH: Intervenors admit the allegations contained in Paragraph 22 of the Amended Complaint.

TWENTY-FIRST: Intervenors deny the allegations contained in Paragraph 23 of the Amended Complaint.

WHEREFORE, intervenors demand judgment dismissing the Amended Complaint and providing for all appropriate relief.

By their Attorneys,

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DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 4239

JOAN DICENSO, ET AL., *Plaintiffs*,

v.

WILLIAM P. ROBINSON, JR., ET AL., *Defendants*,

and

JOHN R. EARLEY, ET AL., *Intervenor-Defendants*.

Opinion

[Reported at 316 F.Supp. 112.]

June 15, 1970

Before FRANK M. COFFIN, *Circuit Judge:* RAYMOND J. PETTINE, *District Judge—Rhode Island:* HUGH H. BOWNES, *District Judge—New Hampshire.*

COFFIN, Circuit Judge. Rhode Island's Salary Supplement Act, R. I. Public Laws c. 246 (1969), provides for the payment of state funds to teachers of secular subjects in non-public elementary schools. At present the sole beneficiaries of this statute are teachers in Roman Catholic schools. This suit seeks a declaration that the Act violates the Establishment and Free Exercise Clauses of the First Amendment and an injunction against its continued operation.

Plaintiffs are citizens and taxpayers of the state of Rhode Island. The named defendants include Rhode Island's Commissioner of Education, the state Treasurer, and the state Controller, all of whom are involved in the administration of the Act. In addition, a couple with children in parochial schools and several teachers eligible for aid under the statute have been permitted to intervene under Rule 24(b), Fed. R. Civ. P. Jurisdiction is based on 28 U.S.C. § 1343(3). Since the complaint seeks to enjoin a

state law as repugnant to the Constitution, this three-judge court has been convened pursuant to 28 U.S.C. §§ 2281, 2284.

The complaint alleges in substance that Catholic schools are the primary beneficiaries of the Act, that the goal of these schools is the propagation of the Catholic faith, and that the statute therefore has as its purpose and primary effect the advancement of religion. Plaintiffs also claim that the statute constitutes compulsory taxation in aid of religion and thus violates the Free Exercise Clause. In their answers, defendants and defendant-intervenors have stressed that the Act aids teachers, not schools, and have denied plaintiffs' conclusion concerning the purpose and effect of the Act. Defendant-intervenors have also alleged that the injunctive relief sought by plaintiffs would infringe the free exercise of religion of those whose children attend parochial schools.[1]

The case is now before us for final decision on the merits of plaintiffs' and intervenors' constitutional claims. We have held a hearing, at which we received depositions and documentary evidence, and heard testimony from the Superintendent of Schools for the Archdiocese of Providence,

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[1] Defendants also filed a motion to dismiss on the grounds that plaintiffs lacked standing. This objection we find to be without merit. The standing of taxpayers to challenge state expenditures which infringe the Establishment Clause has long been settled. *Doremus* v. *Board of Education*, 342 U.S. 429 (1952). The more recent two step analysis suggested in *Association of Data Processing Service Organizations Inc.* v. *Camp*, 397 U.S. 150 (1970), produces the same result. Plaintiffs allege that their tax dollars are being misspent, thus establishing injury in fact. It is also clear that the Establishment Clause was intended to limit the use of public funds in support of religious institutions. *Flast* v. *Cohen*, 392 U.S. 83, 103-104 (1968); *see Everson* v. *Board of Education*, 330 U.S. 1, 11-13 (1947). Thus the interest asserted by plaintiffs is within the zone protected by the First Amendment. *Accord*, *Lemon* v. *Kurtzman*, 310 F. Supp. 35 (E.D. Pa., 1969), *prob. juris. noted*, 38 U.S.L.W. 3401 (U.S. April 21, 1970).

an Associate Commissioner of Education for the state of Rhode Island, and several teachers eligible for aid under the statute. On the basis of this record, we make the following findings of fact and reach the following conclusions of law in compliance with Rule 52(a), Fed. R. Civ. P.[2]

I. *Findings of Fact*

A. *The Statutory Scheme*

The Salary Supplement Act opens with a statement that its general purpose is to implement the established state policy of providing "a quality education for all Rhode Island youth".[3] This declaration is followed by specific legislative findings: that non-public elementary schools enroll 45,000 students, or 25 per cent of Rhode Island's elementary school children; that because of the numbers enrolled, these schools are vital to Rhode Island's educational effort; and that the rising cost of teachers' salaries makes it increasingly difficult for these schools to maintain their traditional quality. The specific purpose of the Act is, in the language of the statute, "to assist nonpublic schools to provide salary scales which will enable them to retain and obtain teaching personnel who meet recognized standards of quality." To accomplish this objective, the legislature appropriated $375,000 to pay up to 15 per cent of the salaries of teachers of secular subjects in non-public

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[2] In making these findings, we have taken into consideration the evidentiary objections of defendants and intervenors. We have declined to consider evidence concerning the activities of proponents of the Salary Supplement Act for reasons discussed *infra* p. 15 and have also ignored sociological evidence introduced in plaintiffs' post-trial memorandum. We reject, however, intervenors' view that the only relevant evidence concerned the activity subsidized, i.e., secular teaching in parochial schools. Such a narrow view of relevance in effect prejudges the central legal issues of the case.

[3] *Compare* R. I. Const. Art. XII, § 1; R.I. Gen Laws § 16-7-15 (Supp. 1967).

elementary schools. The Act defines "non-public" school to mean a non-profit school whose average per pupil expenditure on secular education does not exceed the average for the state's public schools during a specified period. To qualify for aid, a teacher must have a teaching certificate, must teach a course similar to those offered in Rhode Island's public schools using text books approved for public school use,[4] and must agree not to teach a class in religion.

Regulations implementing the Act call for semi-annual payments to eligible teachers in February and June.[5] Applicants must sign a "Statement of Eligibility" promising not to teach a course in religion and to use only teaching materials employed in the state's public schools. The Commissioner of Education also requires non-public schools to submit data concerning enrollments and total expenditures. If this data indicates a per-pupil expenditure in excess of the statutory norm, an agent of the Commissioner must examine the books of the school in question in order to determine how much of its spending was attributable to secular education and how much to religious.

To date, this final breakdown into secular and religious expenses has proved necessary in only one case. Only two non-public schools have reported expenditures in excess of the statutory norm; and teachers at one of these schools failed to apply for aid, thus obviating the need for further

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[4] *See* R. I. Gen. Laws §§ 16-23-2 and 16-1-9 (Supp. 1967), which authorize local school committees to furnish parochial school children with any mathematics, science or foreign language textbook which appears on the Commissioner of Education's list of books approved for public school use.

[5] The first payment scheduled for February 1970 was delayed by a temporary restraining order entered by the single judge to whom the complaint was originally submitted. The restraining order was allowed to lapse by agreement of the parties, and plaintiffs have waived their prayer for a preliminary injunction.

inquiry.[6] Approximately 250 teachers have applied for aid. It is undisputed that all of these applicants are employed by Roman Catholic schools.

B. *Nature of the Crisis Leading to the Statute*

The evidence introduced at trial fully corroborates the legislature's finding of a financial crisis in non-public education, but indicates that the crisis is largely confined to Rhode Island's Catholic schools. Approximately 95 per cent of the elementary school children attending non-public schools are enrolled in Roman Catholic elementary schools. The financial crisis in these schools stems from the rapidly changing composition of their faculties. As recently as ten years ago, the Archdiocese of Providence relied almost exclusively on nuns to staff its school system. Lay teachers filled only 4 or 5 per cent of the system's 1200 teaching positions. By 1969, lay teachers constituted one third of the teaching force. In the academic year 1970-1971, the great majority of parishes will require at least one additional lay teacher, with some needing two or three more. This precipitous increase in lay personnel—an increase which is expected to continue—has placed a double burden on the parish budgets which finance almost all of the 98 elementary schools. Each shift from a teaching sister to a lay teacher represents a threefold increase in salary expense (i.e., a shift from approximately $1800 to $5500 at present levels). Moreover, the increasing salary levels in public schools make the task of recruiting lay teachers annually more expensive.

The Salary Supplement Act will not relieve the parishes or parents of their escalating burden, but will temporarily enable parochial schools to compete for qualified teachers.

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[6] It is worthy of note that these schools were the only non-Catholic schools to report their expenditures to the Commissioner. As long as Catholic schools rely heavily on nuns, their wage costs are likely to remain substantially below those of public schools, *see infra* p. 6, thus obviating the need to break down expenditures.

A comparison of past and predicted salary levels confirms the limited impact of the statute. In 1968-1969, a starting lay salary in the parochial schools was $5000 a year. In 1969-1970 the diocesan school system offered $6000, hoping that 15 per cent of this amount, or $900, would be paid by the state under the Supplement Act. In the meantime, however, the standard beginning salary for public elementary school teachers in Providence and elsewhere has increased from $6000 to $7000. Even assuming, as does the Superintendent of the diocesan school system, that the parochial schools can compete effectively for teachers if they come within $500 of public school salaries, the diocese must offer a starting salary of $6500 in 1970, of which $975 would be paid by the state and $5525 would be paid by the parish—an increase of ten per cent over the $5000 parish expenditure pre-1969.

The financial implications for both the parishes and the state are clear. Even to continue to subsidize the salaries of the present teacher-recipients at the present percentage figure will cost both the state and the parishes substantially more during the coming school years. But already the Superintendent of the diocesan school system has informed elementary school principles that he expects the present ratio of two sisters to one lay teacher to give way to a one to one ratio in the near future. Moreover, the Superintendent acknowledged at trial that almost all of the teaching staff might be lay persons within five years. Since, as we have seen, the substitution of a lay for a religious teacher means, even at present rates, a threefold increase in salary cost, it is obvious not only that the parochial schools face a monumental and deepening financial crisis but also that the objective and rationale of the Salary Supplement Act—to enable non-public schools to compete effectively for qualified teachers—will inescapably require substantially greater appropriations subsidizing substantially greater percentages of the salaries of lay teachers.

C. *The Parochial School System*

At trial, the parties went beyond the immediate financial crisis in parochial schools to explore the operations of the diocesan school system as a whole. Plaintiffs' evidence was designed to show the close financial and pedagogical nexus between Church and school. Intervenors' testimony explored the teaching of secular subjects in these schools. From this evidence, the following picture emerges.

Rhode Island's Catholic elementary schools are under the general supervision of the Bishop of Providence, and of his appointed representative, the Diocesan Superintendent of Schools. The financing of these schools varies: in some, substantial tuition is charged covering up to 40 per cent of school costs; others charge only a nominal fee and rely on general parish revenues to make up the balance. In most cases, however, the parish assumes the ultimate financial responsibility for the school, and the pastor assumes the ultimate responsibility for the allocation of parish funds. School principals are, with two exceptions, nuns appointed either by the Superintendent or by the Mother Provincial of the order staffing the school. Lay teachers are first interviewed by the Superintendent's office, then by the school principal, with the contract being signed by the pastor of the parish. The Diocese sets minimum salary standards for both lay teachers and nuns, but some discretion is left to the individual pastor in negotiating actual salary levels.

The ground rules for school principals are set forth in a "Handbook of School Regulations", having "the force of synodal law in the diocese." The impression of tidy central management which the Handbook conveys was somewhat dispelled at trial when the Superintendent testified that the Handbook had been frequently superseded either by informal directive or by common practice. Testimony also indicated that individual principals, whether by design or oversight, felt free to make minor modifications in diocesan programs to fit the particular needs of the school.

The main thrust of the Handbook, however, remains clear. The keynote of education in a parochial school is perhaps best reflected in the Handbook's remarks about the importance of a teacher: "The prime factor for the success or failure of the school is the spirit and personality, as well as the professional competence, of the teacher. . . ." Consistent with this view is the Handbook's view of the scope of religious activities: "Religious formation is not confined to formal courses; nor is it restricted to a single subject area." Teachers are further advised by the Handbook to try to stimulate interest in pursuing religious vocations and in missionary work.

This concern for religious values does not necessarily affect the content of secular subjects in diocesan schools. On the contrary, several teachers testified at trial that they did not inject religion into their secular classes, and one teacher deposed that he taught exactly as he had while employed in a public school. This testimony gains added credibility from the fact that several of the teachers were non-Catholics. Moreover, because of the restrictions of Rhode Island's textbook loan law, R.I. Gen. Laws §§ 16-23-2, 16-1-9 (Supp. 1967), and the explicit requirement of the Salary Supplement Act, teaching materials used by applicants for aid must be approved for use in the public schools.

Nevertheless, the diocesan schools do possess a number of distinctively religious attributes which distinguish them from public schools. Each parochial school is in close proximity to the parish church, allowing a convenient access for Mass or other religious exercises. The exterior of the school often has an identifying cross; each classroom contains a crucifix and school interiors generally exhibit religious paintings and statuary. Classes each day begin with a prayer; some schools schedule additional times for prayer. Roughly thirty minutes a day or one hundred fifty minutes a week are devoted to religious instruction. Assembly programs sometimes include a speaker on religious vocations or missionary activity, and some extra-curricular

activities, such as altar or choir boy training and missions programs, are religiously oriented. Students and faculty participate in a yearly retreat and all teachers participate in a two day annual meeting of the Catholic Teachers Institute in which the teaching of religion is occasionally discussed. Occasional guidance counselling, including religious counselling, takes place at the elementary level.

In addition to these factors, the Church gains special advantage from a curriculum which contains both religious and secular subjects. When religion is part of the school day, children can be instructed in their faith more frequently, with less absenteeism, and with greater attention to the religious development of each child. Moreover, religious instruction can be staggered throughout the day to utilize more effectively the limited number of qualified teachers of religion. Finally, we note that the presence of dedicated sisters, though diminishing in numbers, provides an atmosphere where religious instruction and religious vocations seem natural parts of everyday life. Indeed, concern for this intangible "religious atmosphere" has led the Superintendent to decide tentatively to attempt to maintain a one sister to one lay teacher ratio in most of the diocesan schools rather than permitting some to be staffed predominately by lay teachers. To go below this norm would, the Superintendent feared, dilute the Catholic atmosphere of the parochial schools.

Implicit in these findings, we think, is the further finding that the diocesan school system is an integral part of the religious mission of the Catholic Church. It is not that religious doctrine overtly intrudes into all instruction. Rather the combined conveniences of ready access to church and pastor, homogeneous student body, and ability to schedule throughout the day a blend of secular and religious activities makes the parochial school a powerful vehicle for transmitting the Catholic faith to the next generation. It also seems clear to us that this essentially religious enterprise

cannot succeed without good teaching in secular subjects. If the quality of teaching falls too low, then not only will Catholic parents be reluctant to enroll their children, but the parochial schools would also run afoul of Rhole Island's education laws.[7] Good secular teaching is as essential to the religious mission of the parochial schools as a roof for the school or desks for the classrooms.

These determinations point to two ultimate facts. On the one hand, we find that the statute will have the significant if temporary secular effect of aiding the quality of secular education in Rhode Island's Roman Catholic elementary schools. On the other hand, we think it equally clear that the Act gives significant aid to a religious enterprise.

II. *Conclusions of Law*

A. *Plaintiffs' First Amendment Claims*

With these findings in mind, we turn to the central legal issue of the case, whether Rhode Island's Salary Supplement Act violates the First Amendment's provision that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof", as applied to the states through the Fourteenth Amendment. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Everson* v. *Board of Education, supra* n. 1.

Plaintiffs' free exercise claim need not long detain us. In their complaint, plaintiffs alleged that the statute infringed on the free exercise of their religion by forcing them to pay taxes for religious purposes. But plaintiffs offered no testimony concerning their personal religious beliefs and practices, or lack thereof. Thus they have failed to introduce the kind of particularized evidence necessary

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[7] R. I. Gen. Laws § 16-19-2 sets standards for private schools and requires them to obtain the approval of the local school committee to satisfy compulsory attendance laws. *See also* R. I. Gen. Laws § 16-22-2.

"to show the coercive effect of the enactment as it operates against [them] in the practice of [their] religion." *Abington School District* v. *Schempp,* 374 U.S. 203, 223 (1963).

The heart of plaintiffs' case lies in their claim that the Act violates the Establishment Clause. Much of the dispute at trial centered on the appropriate standard for gauging this claim. As of the date of argument in this case, there were three dominant precedents from which the parties drew sustenance. The first was *Everson,* in which the Court upheld a New Jersey statute which permitted reimbursement to parents for bus fares of children attending both public and parochial schools. The second was *Schempp,* proscribing prayers in public schools. The third was *Board of Education* v. *Allen,* 392 U.S. 236 (1968), which upheld a New York law requiring local school boards to loan textbooks to children attending parochial schools.

Plaintiffs have mounted a preliminary attack based on a statement in *Everson* that, "No tax in any amount, large or small, can be levied to support any religious activities or institutions." 330 U.S. at 16. Since the Act appropriates tax monies for employees of religious institutions, plaintiffs maintain, it is clearly unconstitutional. Whatever the continued vitality of the *Everson* test, however, we are satisfied that it cannot be applied in such a literal manner. Although in both *Everson* and *Allen,* tax funds were used to support religious institutions, in both the aid was sustained. Plaintiffs distinguish these cases on the grounds that the cost of bus fares in *Everson* and textbooks in *Allen* was originally borne by the parents rather than the schools. But assuming that state subsidies of buses or books otherwise pass constitutional muster, we find it difficult to believe that these laws would fail because prior to enactment parents bore the costs indirectly, in the form of higher school bills, rather than directly. *Accord, Lemon* v. *Kurtzman,* 310 F. Supp. at 47-48; *Tilton* v. *Finch,* — F. Supp. — (slip opinion at 11-12) (D. Conn. March 19, 1970).

Perhaps recognizing the shortcomings of the *Everson* formulation, both plaintiffs and defendants have focused their argument on the purpose and effect test relied on in *Allen,* 392 U.S. at 243, and first enunciated in *Schempp:*

> "The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of the legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. . . ." 373 U.S. at 222.

The first part of this test—determining the statute's purpose—presents little difficulty. The Salary Supplement Act, in our opinion, was not intended to advance or interfere with religion. The statute itself recites that its purpose is "to provide a quality education for all Rhode Island youth, those in public and non-public schools alike." Certainly, the quality of education in non-public schools is a legitimate legislative concern. *Board of Education* v. *Allen,* 392 U.S. at 245-247. We find nothing in the history and structure of the Act which suggests that the legislative purpose was other than as declared.

In reaching this result, we necessarily reject plaintiffs' attempt to divine the "true intent" of the legislature by inspecting the activities of lobbyists. As Mr. Justice Frankfurther observed in *McGowan* v. *Maryland,* 366 U.S. 420, 469 (1961), "[T]he private and unformulated influences which may work upon legislation are not open to judicial probing." *See United States* v. *O'Brien,* 391 U.S. 367, 383-385 (1968). Nor do we think that the legislature revealed a forbidden motive when it stated that the proposed legislation was designed "to assist non-public *schools* to provide salary scales which will enable them to retain and obtain teaching personnel who meet recognized standards of

quality." (Emphasis added.) Phrasing the test in terms of schools instead of students does not, we think, obscure the legislature's legitimate concern for the quality of education afforded to Rhode Island youth. Finally, while the restriction of aid to schools whose per pupil expenditure does not exceed that of the public schools may result in excluding, for the most part, private but non-parochial schools from the scope of the statute, this provision also serves the legitimate secular purpose of saving state funds by eliminating schools which can well afford qualified teachers.[8]

The second part of the *Schempp* test—determining the statute's "primary effect"—presents a more difficult problem of both definition and application. Plaintiffs have argued that "primary" means "essential" or "fundamental". Defendants and intervenors have taken a more literal position, claiming that "primary" means "first in order of importance". The problem of definition is critcal in this case because, as we have noted in our findings, the Act has two significant effects: on the one hand, it aids the quality of secular education; on the other, it provides support to a religious enterprise. Judicial efforts to decide which of these effects is "*the* primary effect", as *Schempp* seems to require, are likely to be no more satisfactory than efforts to rank the legs of a table in order of importance.

Intervenors, in an effort to give shape to the *Schempp* test, have urged us to focus solely on the activity subsidized in judging effect. In other words, intervenors propose that we examine only the activities of the teachers receiving aid and ignore the religious nature of the schools in which

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[8] This aspect of the statute comes close to being a "religious gerrymander". Harlan, J. concurring in *Walz* v. *Tax Commission*, 38 U.S.L.W. at 4356. Nevertheless, the standard chosen is religiously neutral and almost any criteria based on financial need would produce the same result.

they teach. Such a narrow perspective, however, strikes us as unrealistic when examining direct financial aid to denominational schools. The expenses of a religious institution may be apportioned in a variety of ways among its "secular" and "religious" activities. Under intervenors' proposed test, sophisticated bookkeeping could pave the way for almost total subsidy of a religious institution by assigning the bulk of the institution's expenses to "secular" activities.[9] Equally important, government aid to purely secular activity may nevertheless involve the state so deeply in the workings of religious institutions "as to give rise to divisive influences and inhibitions of freedom." *Abington School District* v. *Schempp*, 374 U.S. at 307 (Goldberg, J. concurring). Such embroilments would escape the narrow focus of intervenors' test.

These deficiencies in the *Schempp* test were, we think, recognized in the recent case of *Walz* v. *Tax Commission of New York City*, 38 U.S.L.W. 4347 (U.S. May 4, 1970), upholding New York's tax exemption for property used for religious purposes. The test as phrased by Chief Justice Burger is still two pronged:

> "Each value judgment under the Religion Clauses must . . . turn on whether particular acts in question are intended to establish or interfere with religious

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[9] Our brother in dissent accepts intervenors' narrow view of the *Allen* test. However, in *Allen* there was no record on which to predicate a finding that the effect of the statute would differ from its declared purpose. Moreover, as our findings indicate, the "religious enterprise" assisted in this case is not the discrete teaching of religion, but the maintenance of an educational environment within which religious instruction takes place in varied ways. *McCollum* v. *Board of Education*, 333 U.S. 203 (1948), suggests to us that such an environment may not be maintained at public expense. Finally, we do not intend our reference to "sophisticated bookkeeping" to imply only sham allocations of expenditures; an accounting system might honestly allocate only a small portion of the total costs of a parochial school to the religious function.

beliefs and practices or have the effect of doing so." 38 U.S.L.W. at 4348.

The Chief Justice's phrasing and application of the effect test, however, mark a significant refinement. Gone are the intimations of *Schempp* that the single predominant effect of a statute may be isolated by a process of deductive reasoning based on principle and precedent.[10] Instead, the Court focuses on whether the statute fosters "excessive entanglement" between government and religious institutions. Such entanglement is variously characterized as "sponsorship", "interference", and a relationship generating "confrontation and conflicts". Most pertinently, in discussing the alternatives of taxing or exempting church property, the Chief Justice observes:

> "[T]he questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement. Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards . . . ." 38 U.S.L.W. at 4350.

Walz thus makes it clear that the test of a statute's effect is not whether the secular result is more important than the religious result, nor whether the activity aided is in form secular, but whether the degree of entanglement required by the statute is likely to promote the substantive evils against which the First Amendment guards.

When the effect of the Salary Supplement Act is judged by this standard, two significant dangers appear. First, the Act authorizes a subsidy which, unlike the exemptions in-

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[10] Indeed, we note that neither the majority nor the concurring opinions rely on the *Schempp* formulation.

volved in *Walz*, must be annually renewed. In a nation of many sects, the efforts to obtain government financing of those few denominations which support school systems will inevitably excite bitter controversy. In some jurisdictions where the majority belong to a single denomination, state subsidies of sectarian schools may amount to an establishment in the classic sense. In Rhode Island itself, sectarian controversy is likely to be exacerbated by the continuing financial crisis in its parochial schools, and by the open-ended nature of the Act. If this grant is constitutional, we would find it difficult to distinguish a 50 or 100 per cent subsidy of teachers' salaries, or a percentage subsidy of the total cost of "secular" education such as Rhode Island already provides its public schools.[11]

On the other side of the coin, significant state subsidies will inevitably produce significant state limitations on the freedom of denominational schools. A direct subsidy of the educational process such as this statute provides requires greater administrative involvement between church and state than the payment of transportation costs involved in *Everson* or the loaning of textbooks in *Allen*. In *Everson*, the local school committee simply reimbursed the parents of parochial school children for bus fares. In *Allen* public school officials—in theory, at least—performed their customary task of determining which books were suitable for public school use. *Compare* R. I. Gen. Laws § 16-1-9 (Supp. 1967).[12] Under this statute, by contrast, the Commissioner of Education must monitor parochial school expenditures and in close cases determine which spending is "religious" and which "secular". This on-

[11] Rhode Island once provided a flat grant for public school teachers' salaries, R. I. Gen. Laws § 16-6-3 *et seq.* (1956), but this system has now been replaced by a percentage subsidy of the cost of education. R. I. Gen. Laws § 16-7-15 *et seq.* (Supp. 1967).

[12] *But see* Note, *Sectarian Books, the Supreme Court and the Establishment Clause*, 79 Yale L. J. 111 (1969), which reviews the contents of the books actually supplied under the New York law and concludes that many were infused with a sectarian viewpoint.

going administrative relationship between government and the Catholic schools creates the possibility of legal disputes over the "secular-religious" distinction, *cf. Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hill Memorial Presbyterian Church*, 393 U.S. 440 (1969), and may well influence the allocation of church resources as the parishes tailor their spending to meet the Commissioner's criteria.

Equally important, the kind of involvement which this statute promotes may significantly limit the internal freedom of parochial schools. Already the Act has restricted the role of teachers. The evidence before us indicates that some otherwise qualified teachers have stopped teaching courses in religion in order to qualify for aid under the Act. One teacher, in fact, testified that he no longer prays with his class lest he endanger his subsidy. Similar restrictions may be expected on the content of courses. In this very case we have been forced to inquire into the teaching in Rhode Island's Catholic schools in order to determine whether religion "permeates" the teaching of secular subjects. *See also Board of Education* v. *Allen*, 392 U.S. at 248. Surely such inquiries represent a substantial limitation on the freedom of parochial schools to set their own curriculum. Moreover, as Judge Hastie pointed out dissenting in *Lemon* v. *Kurtzman*, 310 F. Supp. at 52, private conduct which is heavily subsidized by the state may be viewed as state action and subjected to the same standards of impartiality which we demand of the government. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *cf. Evans* v. *Newton*, 382 U.S. 296 (1966).[13] Applying these standards to parochial schools might well restrict

[13] We note the increasing resort to the federal courts to rectify alleged wrongs committed by school authorities acting under the color of state law. *E.g., Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969) (peaceful protest by high school students); *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961) (procedural due process for students); *Richards* v. *Thurston*, — F.2d — (1st Cir. April 28, 1970) (length of student's hair).

their ability to discriminate in admissions policies, *cf. Pennsylvania* v. *Board of Directors of City Trusts*, 353 U.S. 230 (1957), and in the hiring and firing of teachers, *cf. Keefe* v. *Geanakos*, 418 F.2d 359 (1st Cir. 1969).[14] At some point the school becomes "public" for more purposes than the Church could wish. At that point, the Church may justifiably feel that its victory on the Establishment Clause has meant abandonment of the Free Exercise Clause.

In short, we see as the necessary effects of the kind of legislation involved here not only substantial support for a religious enterprise, but also the kind of reciprocal embroilments of government and religion which the First Amendment was meant to avoid. We therefore hold that the Salary Supplement Act results in excessive government entanglement with religion and thus violates the Establishment Clause of the First Amendment.[15] *Accord, Opinion of the Justices*, 261 A.2d 58 (Me. Jan. 15, 1970).

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[14] The regulations of Rhode Island's Commissioner of Education require schools whose teachers apply for aid to comply with Title VI of the Civil Rights Act of 1964, surely the minimum we may expect of any organization receiving significant public support. More difficult problems loom down the road. For example, one pastor deposed that he would refuse to hire a teacher who had been divorced and remarried. The religious discrimination which sectarian schools must of necessity practice may also be used to cloak other, less desirable forms of discrimination. *See, e.g.*, W. Morris, *Yazoo . . . Notes on Survival, Harper's Magazine* 43, 53 (June, 1970). Whatever their solution, these problems indicate that we would have to rethink much of our law, especially the law of equal protection, in order to accommodate an institution which receives significant state aid and yet discriminates on principle.

[15] While we conclude that Rhode Island's statute is unconstitutional, we do not wish to be read as condemning aid in any form to institutions affiliated with religion. We do not, for example, disagree with the result in *Tilton* v. *Finch*, *supra*, which upheld a federal enactment subsidizing secular facilities at private colleges, including church-related colleges. The degree of institutional involvement required by the federal program was episodic and relatively slight. Moreover, denominational colleges do not have the same close financial, legal, and pedagogical relationship to the Church as do parochial schools.

B. *Intervenors' First Amendment and Equal Protection Claims*

There remains for our consideration the equal protection claim of the teacher-intervenors and the free exercise claim of the parent-intervenors. The equal protection claim is the more elusive of the two. Teacher-intervenors apparently assume a Salary Supplement Act restricted by judicial decree to aiding teachers in non-public but secular schools. Such a statutory scheme, intervenors argue, would violate equal protection because it discriminates among teachers of secular subjects on an impermissible ground—i.e., religion. Their argument remains somewhat hypothetical since, as we have seen, the only applicants for aid have been parochial school teachers. Intervenors are, in other words, complaining of the abstract possibility of discrimination rather than the thing itself. Moreover, intervenors' hypothetical scheme would not discriminate on the basis of the teachers' personal beliefs—surely a suspect classification—but on the basis of the institutions which employ them. This distinction between secular institutions which are eligible for subsidy and religious institutions which are not seems to us commanded by the Establishment Clause. Thus, even though religion in general may be a suspect classification, the mandate of the Establishment Clause provides an overriding justification in this case. *Cf. Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Loving* v. *Virginia*, 388 U.S. 1, 11 (1967).

The parent-intervenors present a more plausible claim, based on the Free Exercise Clause. Their complaint rests on the conviction that children take their values to a large extent from their school environment; a school without religion conveys to the child the notion that religion is unimportant. Because of this conviction, parent-intervenors feel in conscience bound to send their children to parochial schools which teach both secular subjects and religion. If, however, the quality of secular education falls too low in

parochial schools, parent-intervenors may well be forced to ignore the dictates of conscience by sending their children to public schools. To avoid this result, intervenors argue that the free exercise benefits which flow from air to parochial education should prevail over the Establishment Clause values protected by strict separation, citing in support of their argument *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

While sympathetic to intervenors' dilemma, we note that it stems primarily from their personal evaluation of public school education. We reject the notion that the Free Exercise Clause demands affirmative state action to accommodate such personal evaluations when society at large has accepted the premise that religious and secular education can be successfully separated. *See* Freund, *Public Aid to Parochial Schools*, 82 Harv. L. Rev. 1680, 1686-1687 (1969). Certainly it would be anomalous if the First Amendment required the state to exclude religion from the public schools but at the same time to support an entire separate school system in order to facilitate the teaching of religion. Such a result is not compelled by *Sherbert* v. *Verner*, *supra*, which required a minor change in a welfare program to accommodate sabbatarians. The Court was careful to note that such minor accommodation did not entail the kind of involvement of religious and secular institutions forbidden by the Establishment Clause. 374 U.S. at 409. The Court also noted that some burdens on the free exercise of religion could be justified by a compelling state interest requiring uniformity of regulation. 374 U.S. at 406-409. Our case falls within both these exceptions. Not only does the Salary Supplement Act embroil religious and secular institutions, but the Establishment Clause values can be preserved only by denial of direct subsidies to parochial schools. We therefore reject the free exercise claim of parent-intervenors.

III. *Conclusion*

Plaintiffs are entitled to a declaratory judgment that R. I. Public Law c. 246 (1969) violates the First Amendment of the United States Constitution insofar as it authorizes aid to teachers employed by denominational schools, and to an injunction forbidding defendants and their agents from making disbursements to such teachers.

/s/ Frank M. Coffin
Frank M. Coffin
U. S. Circuit Judge

/s/ Hugh H. Bownes
Hugh H. Bownes
U. S. District Judge

Dated at Providence, Rhode Island 15th day of June 1970

Pettine, District Judge—concurring in result, concurring in part and dissenting in part with the Opinion of the Court.

The majority decision holds the Salary Supplement Act unconstitutional for two reasons: (1) its effect is substantially to support a religious enterprise; (2) its operation involves those "reciprocal embroilments of government and religion which the First Amendment was meant to avoid." I concur in the holding of unconstitutionality for the latter reason. However, my disagreement with the former reason requires my separate concurrence.

The Salary Supplement Act does not substantially support a religious enterprise; rather it supports a most important facet of the educational process in modern America, the teaching of all that knowledge presently appropriate for learning, exclusive of religion. That a distinction between the teaching of religion and non-religious subject matter in sectarian schools may be maintained for Establishment Clause purposes seems clear to me from the de-

cision of the Supreme Court in *Board of Education* v. *Allen*, 392 U.S. 236 (1968). I read *Allen* to invite the inquiry whether the state program under scrutiny has as its effect the advancement of a religion. In answering that inquiry it cannot be presumed that secular aspects of the educational process are permeated by religious values emanating from the climate of the educational environment. Only proof will establish that subsidization of an educational enterprise is subsidization of a "religious enterprise." In the instant case not only is the record barren of any proof that the teaching of secular subject matter is a "religious enterprise," but also there is unanimous unrebutted testimony from several teachers of secular subjects in Roman Catholic schools that religion does not enter into their teaching processes.

I cannot accept the majority's proposal that exclusive focus on the educational function sought to be subsidized is too narrow a standard because "sophisticated bookkeeping could pave the way for almost total subsidy of a religious institution by assigning the bulk of the institution's expenses to 'secular' activities." Such reasoning equates the legal and bookkeeping definition of "secular" and "religious." The law is equipped to distinguish bookkeeping entries from legally distinct entities. The secular-religious distinction is fundamental; it will take more than accounting machinations to elude it.

The majority's rejection of the plaintiffs' heavy reliance on the principle stated in *Everson* v. *Board of Education*, 330 U.S. 1 at 16 (1947) that "(n)o tax in any amount, large or small, can be levied to support any religious activities or institutions," would seem to suggest that the *Allen* test is controlling. Paradoxically, however, the majority, in the face of *Allen* and without legal justification, conducts an extensive exploration of the evidence relating to the religious "atmosphere" in the Roman Catholic schools. In my view, *Allen* renders such an exploration irrelevant.

Finally, I would emphasize anew that I agree with the majority that *Walz* v. *Tax Commission of New York City*, —— U.S. —— (May 4, 1970) supplements *Allen*, to the extent that multiple effects of a statutory scheme may be considered, including its potential to create continuing controversies inimical to the values of the First Amendment. *Walz* does not, however, provide any precedent for the majority's assumption that support of the secular educational processes of sectarian schools constitutes "substantial support of a religious enterprise."

With all respect, I concur with the majority's result and only with that portion of the majority's opinion which elaborates the implications of the "excessive entanglements" aspect of the *Walz* decision for the instant case.

RAYMOND J. PETTINE
United States District Judge
June 15, 1970

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Judgment and Order

This action came on to be heard on a motion to dismiss and for trial on the merits before the Court, the Honorable Frank M. Coffin, Circuit Judge, the Honorable Raymond J. Pettine, District Judge for Rhode Island, and the Honorable Hugh H. Bownes, District Judge for New Hampshire, and after hearings thereon, arguments of counsel, the Court having rendered an opinion, dated June 15, 1970, setting forth its findings of fact and conclusions of law pursuant to Rule 52(a) of Fed.R.Civ.P., it is hereby

ORDERED AND ADJUDGED

1. The defendants' Motion to Dismiss is denied.

2. Rhode Island Public Law C.246 (1969) is hereby declared to be unconstitutional in that it violates the First Amendment of the United States Constitution insofar as it authorizes aid to teachers employed by denominational schools.

3. The defendants and their agents are permanently enjoined from making any payments or disbursements under Rhode Island Public Law C.246 (1969) to teachers employed by denominational schools.

So Ordered,

RAYMOND J. PETTINE
U.S.D.C.J.
June 17, 1970

NEAL MURPHY
Clerk of Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Order

This cause came on for hearing on the application filed by the defendants herein and presented orally by the Intervenors herein for a stay of the injunctive relief granted plaintiffs in the Judgment of this Court, and after hearing counsel I find:

(1) That the loss to the Plaintiff Taxpayers of their tax monies to be anticipated to resulted from the

issuance of a substantial stay *pendente lite* as applied for because of disbursements to teachers under Chapter 246, Public Laws 1969 is substantial and controlling;

(2) That the interlocutory stay applied for in the alternative by the defendants will unduly and improperly restrict the Honorable William J. Brennan, Jr., Circuit Justice of the Supreme Court of the United States, in acting on any application for a stay which may be presented to him in this matter by the defendants and/or Intervenors by establishing an arbitrary deadline for his action.

It is therefore ordered that the application be and it is denied for the reasons stated.

/s/ RAYMOND J. PETTINE
United States District Judge

Dated: June 17, 1970

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Notice of Appeal to the Supreme Court of the United States

1. Notice is hereby given that the Defendants in the above-captioned matter do hereby appeal to the Supreme Court of the United States from the final judgment declaring Rhode Island's Salary Supplement Law unconstitutional and enjoining the operation of that statute, entered in this action on June 17, 1970. This appeal is taken pursuant to Title 28 of the United States Code, Section 1253.

2. Pursuant to the provisions of Rule 12 (1) of the Rules of the Supreme Court of the United States, the Clerk is requested to certify and to transmit to the Supreme Court of the United States the entire record of the proceedings herein.

Dated: June 25, 1970

WILLIAM P. ROBINSON, JR.
Commissioner of Education

HERBERT F. DE SIMONE
Attorney for the Defendant

/s/ HERBERT F. DE SIMONE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Caption omitted in printing]

Notice of Appeal to the Supreme Court of the United States

1. Notice is hereby given that the intervenor-defendants in the above-captioned matter do hereby appeal to the Supreme Court of the United States from the final judgment declaring Rhode Island's Salary Supplement Law unconstitutional and enjoining the operation of that statute, entered in this action on June 17, 1970. This appeal is taken pursuant to Title 28 of the United States Code, Section 1253.

2. Pursuant to the provisions of Rule 12(1) of the Rules of the Supreme Court of the United States, the Clerk is requested to certify and to transmit to the Supreme

Court of the United States the entire record of the
ceedings herein.

Dated: June 26, 1970

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SUPREME COURT OF THE UNITED STATES

Order

WILLIAM P. ROBINSON, ET AL.

v.

JOAN DICENSO, ET AL.

The application for a stay of the order of the United States District Court for the District of Rhode Island entered in Civil Action No. 4239 on June 17, 1970, which application was presented to Mr. Justice Brennan, and by him referred to the Court, is granted, and the said order is hereby stayed pending the timely filing of an appeal in this Court. Should the appeal be so timely filed, the stay will remain in effect pending its disposition. In the event the appeal is dismissed, the stay is to terminate automatically. Should jurisdiction be noted or postponed in the case, the stay is to remain in effect pending the issuance of the judgment of this Court. Mr. Justice Douglas dissents from the grant of the stay. Mr. Justice White and Mr. Justice Marshall took no part in the consideration or decision of this application.

June 27, 1970

EXCERPTS FROM TESTIMONY GIVEN AT HEARING BEFORE THREE-JUDGE COURT

• • • • • • • • • • •

PROCEEDINGS OF MARCH 18, 1970

[23] Mr. Stanzler: Your Honor, I think we take the easy part now, and I indicate to the Court that there are some stipulations that have been made which I would like to introduce and read into the record. The first stipulation signed by the plaintiffs' attorneys, attorneys for the State and attorneys for the intervenors is as follows: The undersigned on behalf of the plaintiffs, defendants and intervenor defendants do hereby stipulate and consent to the introduction in evidence at the trial on the merits herein of the depositions of Edward F. Wilcox and John R. Earley, taken on February 25, 1970, such deposition to be introduced in evidence subject to the rights of all parties here to present additional testimony from either of said deponents at trial and subject to the rights of the defendants and intervenor defendants to press objections to questions or exhibits which objections were made at either of said depositions, and the parties do hereby further stipulate and agree that each of the plaintiffs is a citizen and taxpayer in the United States and in the State of Rhode Island and a resident and qualified legal voter in the State of [24] Rhode Island and that plaintiffs Hill and Chase are parents of children regularly registered and attending the elementary or secondary grades in public schools of Rhode Island. I would offer this stipulation.

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[38] Mr. Stanzler. I would like to next offer the "Handbook of School Regulations of the Diocese of Providence."

Mr. Collins. I object, your Honor, and I would ask that a foundation be laid for the introduction of this document as to whether it is in effect, whether it has been modified, what parts of it are in effect, whether it is binding, whether it is followed. And we will have substantial evidence on

that. So at this time I object. There is no foundation laid for its entry in evidence.

Judge Coffin. Do you wish to respond?

Mr. Stanzler. Yes, your Honor. Mr. Collins referred a moment ago to Mr. Earley whose deposition was taken; and Mr. Earley is principal of the St. Francis Xavier School. It is on page 8 of his deposition. He was asked about the guidelines and regulations from which the school must work. And, if I [39] may take a moment of the Court, I will read that. On page 8, question number 53:

"Do you make any decisions as to the curriculum and programming for the school?

"Yes, sir.

"Do you have any guidelines or regulations within which you must work and operate the school?

"Well, we have the guidelines insofar as the state regulations are concerned, yes, sir.

"And how about the Diocese, does the Diocese provide you with guidelines?

"The Diocese puts out a handbook of regulations which are a general guideline, yes." And I believe that covers it. This is the deposition which was taken but recently on February 25, 1970.

These are the guidelines and the book of regulations that the witness referred to, and I think they are properly admissible. And it speaks for itself whether it was adopted by the Office of the Superintendent in 1965. And I would suggest that that properly lays a foundation for it. If there had been any revisions or modifications, it would seem to me the intervenor-defendants or the defendants could make reference to the fact that it has been modified or changed. But as of the deposition of Mr. Earley, he did testify that these were the guidelines.

[40] Judge Coffin. Aren't you going to be calling a witness who could say whether or not these are the guidelines in current effect, and, if not, what changes have been made? Would that satisfy Mr. Collins?

Mr. Collins. Yes, your Honor.

Judge Bownes. The deposition doesn't identify these guidelines.

Mr. Stanzler. We didn't specifically identify this exhibit. But it did make reference to the diocese putting out a handbook of regulations. But we did not specifically identify or offer for introduction at that time these regulations.

Judge Bownes. Wasn't that the crux of your objection, Mr. Collins?

Mr. Collins. Yes, your Honor.

Judge Coffin. This exhibit may be marked Plaintiffs' No. 14 for identification, and we shall leave it to testimony to establish whether or not it is current.

(Handbook of School Regulations of the Diocese of Providence marked Plaintiffs' Exhibit No. 14 for identification)

Mr. Stanzler. Briefly, I have one further stipulation between the parties. And it is to this effect, which is the language agreed upon:

That between 90 to 95 per cent of the nonpublic [41] elementary school students in Rhode Island are enrolled in Roman Catholic parochial schools.

That is the stipulation.

* * * * * * * * * * *

[50] **Edward W. K. Mullen,**

first having been duly sworn, testified as follows:

Examination by Mr. Stanzler:

Q. (By Mr. Stanzler) Father Mullen, you have been subpoenaed to attend this hearing today? A. No.

Q. It hasn't been served upon you?

Mr. Collins: Yes. We've agreed to accept [51] the subpoena for the father.

Judge Coffin: It appears the witness has not volunteered to appear as a witness for you.

Mr. Collins: I wouldn't want to challenge his first answer, Your Honor.

Q. (By Mr. Stanzler) Not having seen the subpoena, Father, I don't suppose that you are aware of the fact that you were subpoenaed to bring the Handbook and Regulations of the Roman Catholic Diocese of Providence? A. I have a handbook with me, yes.

Q. Would you bring it with you to the stand, please?

(Witness leaves stand and returns)

Q. Thank you, Father. For the record, what is your full name, Father? A. Edward W. K. Mullen.

Q. And where do you live? A. I live at 125 Governor Street, Providence.

Q. What is your profession? A. I am a clergyman.

Q. And you are a clergyman for the Roman Catholic Church? A. Yes.

Q. What is your occupation? A. I am superintendent of the schools for the Diocese of Providence.

[52] Q. And how long have you held that position? A. Two years.

Q. And prior to that time, what was the position that you held? A. I was Assistant Superintendent of Schools and Chaplain to the students at Brown University, the Catholic Schools, for a period of about seven years, a little over seven years.

Q. Now, Father, are you familiar with the so-called salary supplement bill that was passed at the last session of the General Assembly of Rhode Island in the year of 1969? A. Yes, I am.

Q. And during that period of 1969, the 1969 session of the General Assembly, were you aware of the developments of the legislature with regard to the bill? A. Yes, sir.

Q. How were you aware of that, Father? A. Namely, through the newspaper.

Q. Did you appear in public, Father, to make public statements in connection with that proposal? A. The only

public appearance I can recall was on Channel 36, a two-part television debate with Mr. Shine.

Q. That's Mr. Shine who is one of the counsel for the plaintiffs, here? [53] A. Yes, sir.

Q. Did you give any interviews to the press relative to the contents of that proported legislation of 1969? A. Yes.

Q. And at that time, what was your position relative to the bill? A. I supported it.

Q. Do you recall the bill as it was originally introduced, Father? A. Yes, I think so.

Q. And do you recall whether or not it made reference to the requirement for public per pupil expenditures that the teachers could only be qualified that come from schools with certain per pupil expenditures? A. I don't believe that provision was in it.

Q. You don't believe it was in the original— A. Yes, when the bill was first introduced.

Q. However, as was subsequently adopted by the legislation, there was a requirement that you do recall where it was a per pupil expenditure requirement in order to be eligible for it, is that correct? A. That's correct.

Mr. Allen: Your Honor, it is my understanding my objection covers this line of inquiry?

[54] Judge Coffin: Yes, it does.

Q. Now, do you recall any other occasion at which you took a position publicly in connection with the legislation? A. No, I don't. I mean, I didn't speak at any parish meetings or any other public events that I can recall.

Q. Do you recall how many times you made any statements to the press regarding the legislation? A. Somewhere between five and ten or—

Q. And these statements were made during the period of time that the legislature was considering the bill as introduced initially? A. Yes.

Q. And were any of these statements made just prior to—strike that.

Q. Were you aware of the consideration of the legislature in amending the legislation as it was introduced

originally? A. I don't fully understand the question, sir.

Q. Well, you know that the legislation was amended as it came from the legislature, from the time it was originally introduced? A. Yes, sir.

Q. Were you aware of any reconsideration of the provisions of that legislation as originally introduced? A. Are you referring to the provisions of the, about the per [55] pupil cost thing?

Q. Yes. A. Was I aware of that while it was being—

Q. Yes. A. No, not really.

Q. You say "not really"? A. I didn't become aware of the fact that this was being contemplated, I don't think, until the matter was actually before the General Assembly.

Q. Did you communicate with any legislators regarding the salary supplemental law? A. Regarding the whole law?

Q. Yes. A. I did. Mr. McKenna, in his capacity as a member of the Board of Directors of the Citizens for Educational Freedom, that was one of the groups that was sponsoring the legislation.

Q. But he is a member of the legislature? A. Yes, sir.

Q. He is a representative in the House of Representatives? A. Yes, sir.

Q. How many times did you confer with him with respect to that legislation? A. I believe it was three times.

[56] Q. Now, did you confer with him prior to the introduction of the legislation initially? A. Yes, I think I did, or when I say "with him," I mean as part of the group of the Citizens for Educational Freedom group, not alone.

Q. As I understand it, then, you met with Representative McKenna while he was conferring with other members of the Board of Directors of the Citizens for Educational Freedom? A. Yes, sir.

Q. What is the Citizens for Educational Freedom? A. It's a private organization, national scope, which seeks to promote public assistance for non-public schools in various ways.

Q. Is it directed only to non-public schools or to just the Roman Catholic Schools? A. Oh, non-public schools gen-

erally. This organization is very strong in the mid-west where there are a considerable number of non-Roman Catholic non-public schools.

Q. Now, prior to the introduction of the bill, do you recall how many meetings of this organization that you attended with Representative McKenna? A. I think just one before the introduction of the bill.

Q. Did Representative McKenna head this organization prior [57] to last year? A. In effect, yes, I think he had the title of Acting President, or something like that.

Q. That's for the State organization? A. Yes, sir.

Q. And at these meetings that you attended with Representative McKenna, there were discussions relative to the terms of the legislation for introduction in the General Assembly to bring about aid for the non-public schools? A. Yes.

Q. Was that the main thrust of the meeting that you attended? A. Yes.

Q. Now, do you know whether there were hearings before the General Assembly on this so-called salary supplement bill? A. Yes.

Q. Did you personally appear to testify? A. No.

Q. Did you have a representative go in your behalf? A. Yes.

Q. And who was that? A. Mr. Frank Burns of Pawtucket.

Q. And when I say "representative," in what way did he represent you? A. He was at the time Vice Chairman of the Diocese School Board.

[58] Q. And did he read a statement for the Diocese School Board at the time? A. Yes.

Q. Representing the Diocese School Board? A. Yes.

Q. That statement urged the General Assembly to enact the legislation that was introduced? A. Yes.

Q. Do you recall whether that statement was urging the enactment of the bill as introduced or as amended? A. No, that I do not recall.

Q. Do you know whether or not any other religious groups urged the General Assembly to enact this law? A. I don't know.

Q. Now, Father, you did appear on television and made statements to the press relative to the enactment of the law and the reasons for its passage. What were your reasons for the enactment of this law?

Mr. Collins: I object, Your Honor.

Mr. Allen: I object. This is subjective evidence, why he might like the law.

Mr. Stanzler: Well, I think his urging upon the legislature might carry some weight and indicate the aid which I think we can demonstrate. I think we will [59] admit the aid was necessary to help the Roman Catholic Schools.

Judge Coffin: But this is not what he said to the legislature, this is just his own view.

Mr. Stanzler: Well, perhaps I can clarify it with one other question.

Q. Father Mullen, a statement was prepared by the Vice Chairman of the Diocesan School Board. Did you participate in the developing and preparing of that statement? A. Yes, sir.

Q. When the Vice Chairman of the School Board was preparing, or did make that statement, it was made with your knowledge? A. Yes.

Q. And the reason from the point of view of the Diocesan School Board was set forth in that statement as to why the legislation should be enacted? A. Yes.

Q. What were the reasons for the Diocesan School Board urging this legislation?

Mr. Allen: I object. There is no showing here that the legislature adopted or rejected or even gave any consideration to Mr. Burn's appearance. I mean, any number of other people might have gone there and said any number of other things. I think now we are really trying [60] to psychoanalyze the legislature. I really object to pursuing this.

Judge Coffin: By the way, do hearings in the Rhode Island legislature get published?

Mr. Stanzler: No, Your Honor, they are not transcribed —on certain occasions they are. I don't think these hearings were.

Judge Bownes: As a matter of practice, normally, they do not transcribe the hearings?

Mr. Stanzler: No, Your Honor.

Mr. Allen: I have no disrespect for this witness, Your Honor. Nevertheless, I think it is difficult to pick apart the legislature's mind by this proceeding.

Mr. Collins: May I reflect that I object also?

Mr. Stanzler: May I just say in answer to Mr. Allen's statement, we are not attempting to psychoanalyze the General Assembly. We are asking the reasons why the Diocese School Board supported legislation. I think it might give the Court the benefit of—

Mr. Collins: Well, if that is so, then Mr. Shine ought to testify as to why he opposed it, and everyone else who testified pro and con or in the middle should so testify, and the Court can make its decision as [61] to what might have motivated the legislature. That is the problem we have with inviting this man to take the stand and attempt to search the quarters of this man's mind.

Mr. Stanzler: It's not his mind, it's the statement of the Diocesan School Board, not this man's mind.

Judge Coffin: Just a moment, gentlemen—Mr. Stanzler, do you have a copy of the diocesan statement that was given?

Mr. Stanzler: No, I don't, but I was waiting for the Court's ruling. I was going to ask the father if he might have a copy of that.

Judge Coffin: We are willing to, as we announced earlier, indulge a fairly broad scope, because of the importance of gathering a record which will not ultimately be thought to be insufficient. Therefore, we are willing to accept into evidence the diocesan statement of the time, but we are

not willing to do it by Father Mullen's remembering what it might have been.

Mr. Stanzler: Thank you, Your Honor.

Q. Father Mullen, is there a copy of the statement that was prepared by the Diocesan School Board that was read to the General Assembly in your possession, or to your knowledge, in your office? [62] A. I think I can find one, yes.

Q. And would you be willing to produce it for the benefit of the Court and have it introduced in this case? A. Yes, sir.

Q. Now, Father, you followed the progress of this bill through the General Assembly rather closely, did you not? A. Yes, sir.

Q. And is it fair to say that the reason you followed the bill rather closely and watching its passage was that the Catholic Parochial Schools were in dire financial straights? A. Yes.

Q. And were there any other reasons or arguments—strike that, please.

Q. Were there any other reasons why you were closely watching this legislation as it went through the General Assembly? A. Yes, because of our financial difficulties it was becoming more difficult every year to obtain the necessary quantities of properly qualified lay teachers, and it was a matter of great concern to me because I was hopeful that this legislation would enable us to hire the kind of people we needed in sufficient numbers in order to maintain the quality of instruction that we are used to.

Q. But this basically was the financial condition of the schools, that was the reason for your interest in the [63] legislation? A. No, no. The financial conditions of our schools was the reason for the deterioration of the quality in teachers. It was the quality of the instruction that was really bothering me.

Q. Well, Father Mullen, you recall participating in a deposition of February 25, 1970? A. Yes, I do.

Q. And have you read the deposition since that time? A. Yes.

Q. And do you recall the statement that you made at that time relative to a similar question which was asked of your with respect to the reasons or arguments that were made by you to the General Assembly or public for the enactment of this legislation?

Judge Pettine: Mr. Stanzler, do you have any question there of the answer?

Mr. Stanzler: Yes, Your Honor.

Judge Pettine: Is it a contradiction to what the father said?

Mr. Stanzler: It seems to me it may.

Judge Pettine: Then I suggest you read the question and the answer to him and ask him if he remembers that was the question and the answer he gave.

[64] Q. I am reading here, it's an intervening question, I am reading here Question 39 on Page 7. "And on a number of occasions, in fact, didn't you make statements that the Catholic Parochial Schools were in dire financial straights, or words to that effect? A. Yes. Q. And that aid such as was involved here was necessary in order to allow them to continue to operate? A. If they were to continue to operate on their present scale which I think is an important qualification. Q. You followed, I take it, the progress of this bill through the General Assembly and up to the time it was enacted very closely; is that fair to say? A. Yes. Q. And are you aware of any other substantial reasons or substantial arguments that were submitted to the public and to the General Assembly as reasons for enactment of this legislation other than you have described here? A. You mean, reasons given by other people? Mr. Shine: Yes. The Witness: Well, no."

Mr. Collins: I submit, Your Honor, that is the same as the testimony he has been giving.

Judge Coffin: Yes, the difference eludes us.

Mr. Stanzler: But the point, what eluded me was that you mean these are given by other people. I'm sorry. I apologize, Father.

[65] Q. Now, Father, were there some other—I think you may have indicated, did you not, that at that time the parish could not provide a staff to carry on the schools? A. I would like you to read—that sounds a little peculiar to me.

Q. Throughout the early part of—

Judge Bownes: Mr. Stanzler, I am sorry, but I am confused now. Are you going to ask him if he remembers these questions or are you going to do what you started out to do originally, ask him the question and then if there is some discrepancy, refer to the deposition? Wouldn't that be better?

Q. Father, is it not so that during the year, the early part of 1969, that you made a statement to the press that certain of the Catholic parochial schools were being closed down for financial problems? A. Yes, sir.

Q. And now, Father, when the bill was passed by the General Assembly, did you issue a statement in response to inquiry from the press on or about the day the law was passed, if you recall? A. Yes, sir.

Q. And do you recall what you said at that time? A. Well, I said something to the effect that I was delighted [66] that although the amount of money involved was quite small, it would nevertheless do quite a bit of good.

Q. Now, I think I previously asked you whether or not any other religious groups appeared before the legislative session, and I believe you said no. Do you know whether or not there were any representatives of any other schools other than the Roman Catholic parochial schools that asked or requested passage of this legislation?

Mr. Allen: If he knows.

Mr. Stanzler: That's the question.

A. I really don't know. Not that I was aware of.

Q. Now, Father, is there a guideline or handbook which governs the Roman Catholic Parochial Schools under your supervision? A. Yes, sir.

Q. Do you have that handbook with you? A. Yes, sir.

Mr. Stanzler: I think that's in evidence as Plaintiff's Exhibit Number 14 for Identification, as Number 14, that is the Handbook of School Regulations for the Diocese of Providence.

[67] Q. And that was published in 1965? A. Yes.

Q. And is that the handbook which is now in effect? A. Yes, except insofar as it has been superseded by later directives.

Q. Have there been any formal directives or written directives which supersede that handbook? A. Yes.

Q. Do you have those with you? A. Why, yes, I have some.

Q. When were those adopted? A. Well, let me explain. We have never issued any sort of a directive which explicitly says this repeals section such-and-such of the handbook. Perhaps we should but we are not all that efficient, you know. When a change is needed we simply issue a directive to the principals, and that then becomes the effective operating procedure.

Q. When you issue the directive to the principal is it in written form? A. Yes.

Q. Have these been issued to the principals? A. Yes.

Q. But, nevertheless, the handbook, subject to that, is still in effect. A. Yes.

[68] Mr. Stanzler. I would like to now offer the handbook.

Mr. Collins. Your Honor, may I voir dire the witness with respect to that?

Judge Coffin. Yes.

Voir dire examination by Mr. Collins

Q. Father, you said that some portions of the handbook have been superseded by written directive. Have any portions of the handbook been superseded by practice? A. Yes.

Q. Were there any portions of the handbook that were never put into practice? A. Yes.

Mr. Collins. Under the circumstances, your Honor, I would object to the handbook going in in general. If the

other side would advise what portions of it they are relying on, I think they should ask Father whether those have been superseded, whether not. That is my problem.

Judge Coffin. Mr. Stanzler, Mr. Collins, we suggest the following procedure be attempted: That is, if you would use time during the lunch hour or after your lunch to try to settle what parts of the handbook you are particularly interested in, what parts of that area have been changed by formal directive, with such information as you can gather or agree on, what parts are claimed to have been changed by [69] practice. In other words, I think we would expedite matters if you and Mr. Collins and Mr. Allen—perhaps Father Mullen could be of some help—could winnow out what we need; not only what the handbook is as printed, but we would be interested in knowing what the records have been and what changes have been accomplished other than through directives, if it is agreeable?

Mr. Collins. Yes, your Honor.

Mr. Pfeffer. We would like to consult on that for a moment, if your Honors please. May we consult on that for a moment?

(A pause)

Mr. Stanzler. May it please the Court, I would, of course, be willing to and would accept the Court's suggestion. It is our position that the handbook, however, would be properly admissible whatever directives there may have been amending this. But we believe that the entire document is properly admissible. And insofar as the essence of it, what portions of it may or may not have been modified, depending upon statements we don't know about that may have been given to other school principals or teachers, we believe it really goes to the essence of the weight to be given to the handbook.

Judge Coffin. What would be helpful to us is if we could have the original handbook. But the defect of the [70] original handbook is that we now know there have been some changes, and we would like to have those parts that

have been changed by directive. And, ideally, we would like to have the handbook that is put into evidence marked as to passages which have never been put into practice. And if there is disagreement, we will take that into account. We don't insist that you agree to that.

Mr. Stanzler. We certainly don't know which parts of the handbook were not put into practice. And if one examines the handbook and sees the directive of the Bishop of Providence that is set forth on the first page, we would argue that, of course, goes to the weight as to whether it has been put into practice or not and what the position is of various principals and teachers.

Judge Coffin. It would simplify matters if you could spend some time doing that.

Mr. Stanzler. We will attempt to do that.

Judge Coffin. This would save time for Mr. Collins later on in trying to elicit from Father Mullen what particular sections have never been put into practice. And if you could agree, even as to what the testimony might be,—I think ingenious counsel can sometimes do more than they think they can.

With that in mind, it is 12:25 and we have given you a bit of a chore to do. Are you nearly through with Father [71] Mullen?

Mr. Stanzler. I think Father would probably have to come back anyway.

Judge Coffin. Then let us recess until two o'clock.

(Noon Recess)

[72] Afternoon Session

Mr. Allen: May it please the court, this is probably as good a time as any, in the deposition of Mr. Wilcox that was previously admitted this morning, Your Honor, on Page 7—it seems insignificant—I want the record to be consistent right through. In the answer to Question 27, Mr. Wilcox refers in the fifth line of his answer to Mr. Peter Mazzeo. All counsel are agreed that, in fact, he is refer-

ring to Mr. Peter M-A-S-C-I-O, a gentleman who Judge Pettine will remember at one point was offered as a witness earlier in the proceedings in this matter.

Mr. Stanzler: Your Honors, during the lunch break counsel attempted to get together and made some progress or we were beginning to make progress when we were interrupted by the unusual situation and we have not concluded the determination of the various portions of the Handbook. We could proceed as the court sees fit. We could resume with Father Mullen's testimony and at the conclusion of his testimony attempt to resume our discussion relative to the Handbook. I do not think it will take too much [73] longer.

Judge Coffin: You suggest proceeding with Father Mullen?

Mr. Stanzler: Yes, I think we could do that.

Judge Coffin: Very well.

Mr. Collins: Your Honor, I think I am in total agreement with that. However, I do think it is going to take a substantial period longer to go through the Handbook. The suggestion was made by one of the lawyers that perhaps we should do that this evening and that might save time rather than doing it now.

Mr. Pfeffer: We would have no objection to that, Your Honor. Our case will be completed with Father Mullen.

Judge Coffin: The only question I have here is whether you need an authenticated version for examination of Father Mullen or whether that is independent of your examination of Father Mullen.

Mr. Stanzler: I will show him Exhibit 14 for identification and ask him if that is the same Handbook that has been distributed in the past.

[74] Judge Coffin: I think the sensible procedure then is to proceed with Father Mullen and take your time this evening to make what progress you can make.

Mr. Pfeffer: One other agreement reached during the lunch recess, in the earlier depositions produced there is a reference to a pamphlet which was not otherwise identified. Both parties and counsel agree that that Handbook in Mr.

Earley's testimony refers to the document Exhibit 14 for identification. That document is referred to by him in his deposition.

Reverend Edward W. K. Mullen, Resumed

Direct Examination by Mr. Stanzler

Q. Now, Father Mullen, I show you Exhibit 14 for identification which has on the front of it "Handbook of School Regulations," and I ask you if that is the Handbook that you have referred to as being distributed to principals or a copy of it? A. Yes, this is the Handbook.

Q. Now, what function does the Handbook serve, Father? A. It serves as a guide to the schools in the day-to-day operations of operating the school.

[75] Q. And is it considered binding upon the schools in terms of policy and administration? A. Yes, again, it is something so far as it has been amended later on. "Binding" is rather a difficult word. Some bulletins are more binding than others, but generally speaking yes.

Q. So it serves as a guide and is binding with respect to the administration and operation of the schools? A. Yes.

Q. And does every principal obtain one of these Handbooks? A. Yes.

Q. Do any of the teachers receive these? A. They were originally intended to, but in fact they do not—only the principal has one.

Q. Since 1965 when it was first adopted, were they issued to the teachers? A. I don't remember really what happened in 1965, but since then only principals have been given Handbooks.

Q. They are maintained in the schools? A. Yes.

Q. Each principal maintains his own Handbook? A. Yes.

Q. Now, obviously from what we are talking about here, [76] the Roman Catholic parochial schools in the state have religious teachers and lay teachers? A. Yes.

Q. And are there any fathers or priests teaching at any of the elementary schools to your knowledge? A. No, only

—well, occasionally priests from the parish will teach religion, but aside from that no.

Q. Could you tell the court how many elementary schools there are in the Diocese of Providence? A. Ninety-eight.

Q. And out of the 98, do all of the schools—of all of the 98, do all of them have a combination of lay and religious teachers? A. With one exception. Well, more than that. There is one school which has all lay teachers and there are, perhaps, two or three which have all religious. Other than that they are combinations, yes.

Q. So there are two or three schools that have all religious teachers? A. Yes.

Q. And the one that has all lay teachers, does that have a lay principal as well? A. Yes.

[77] Q. That is the school which Mr. Earley is principal of? A. Yes.

Q. Saint Xavier's School in East Providence?

Judge Coffin: These are elementary schools?

Mr. Stanzler: Yes.

Q. Now, what is the ratio of religious teachers to lay teachers, approximately, in each of the schools? A. Well, the ratio varies quite a bit from school to school. The Diocesan averages about two to one, two religious for one lay.

Q. Now, what do you mean by religious teachers? A. Sisters, nuns.

Q. Sisters? A. Yes.

Q. Now, approximately how many students are there in the elementary schools? A. Twenty-nine thousand and change. I think it is 29,340 somewhere.

Q. As long as, I suppose, we are talking about the elementary schools, we ought to define what grades those include? A. One to eight.

[78] Q. Grades one through eight? A. Yes.

Q. And substantially most of the children who attend these elementary schools are of the Roman Catholic faith? A. Yes.

Q. Now, the elementary schools are, and I believe you identified them, as 98 in number, are those all parish schools? A. The great majority of them are, but not all of them.

Q. And these great majority that are parochial schools, does that mean they are owned and operated by the parish itself? A. Yes.

Mr. Stanzler: I think you wanted to add something.

The Witness: I thought I would give you the figure for those who were not.

Mr. Stanzler: Would you, please?

The Witness: There are, let's see, there are currently three that are inter-parochial, that is, operated by two or three parishes. There are six which are private; that is to say, operated [79] by a religious community, a community of sisters who own and operate the schools, and there is one which is operated by the Diocese and there is one—I have to correct that. When I say "three regional," there are only two that are operated by more than one parish. There is one school which is operated by a separate corporation. It is an autonomous school. It is not affiliated with any parish or the Diocese.

Q. That is run by an order? A. It is operated by a board of directors under a legal incorporation under the state laws of incorporation, a non-profit agency.

Q. Now, who appoints the principals to the schools? A. In the majority of cases the Mother Provincial of the order of sisters which staffs the schools. In the case of the Sisters of Mercy schools, of which there are 30, in the last two years I have appointed the principals. In two cases the pastor appoints the principal. That is Mr. Earley's school and Saint Sebastian's School in Providence which has only one sister and in the case of Saint Charles' School, which is the autonomous school I mentioned, the principal, I believe, is appointed by the board of [80] directors of that school.

Q. Now, I think we may have brought this out before, but except for Mr. Earley, Father, each of the principals is either a priest or a nun? A. No, there is one other lay

principal. Saint Sebastian's School has a lay principal also. There are no schools that has a priest principal.

Judge Bownes: Because they are elementary schools?

The Witness: Yes, they are sisters.

Q. Now, how are the teachers engaged, let's take the religious teachers or nuns? A. They are appointed by the Mother Provincial.

Q. And the lay teachers, how are they appointed? A. Well, the contract for the lay teacher is signed with the pastor. The recruiting process starts in my office and one of my assistants interviews all applicants. They fill out an application and she interviews them and passes on the qualifications and if they are suitable she then refers them to a pastor who signs the contract with them.

Q. At the school itself, if you know, is it the pastor who interviews the teacher or the principal who [81] interviews the teacher, that is, the lay teacher? A. Well, the practice varies a bit from parish to parish. I think in most cases it is the principal.

Judge Coffin: Your office interviews them first and then you refer them to the school and the principal interviews them?

The Witness: Yes.

Judge Coffin: And finally the pastor signs the contract?

The Witness: Yes.

Q. There are times, however, when they are interviewed initially by the pastor of the schools? A. Yes, there are times. This is against the rules but it does occur.

Q. Any, to your knowledge, are substantially all of the lay teachers Roman Catholics? A. Well, the great majority of them are. I would not say "substantially all" by any means.

Q. Now, does each school identify itself by a name?

Judge Bownes: Excuse me, Father, do you have any percentage figures on that, 70 per cent Roman Catholic, 80 per cent Roman Catholic, 90 per cent?

The Witness: Unfortunately, I cannot [82] give you a firm figure, Your Honor. We don't keep those statistics as

such. My estimate would be perhaps 10 to 15 per cent of our teachers are not Catholics.

Q. Now, is each school identified by the name of generally the parish? A. Yes.

Q. And the name is usually set, as I understand it, the school building, the parish school is separate and apart from the parish building? A. It is, yes.

Q. And the school from point of view of physical identification, does it have a cross on the outside of the school? A. Some of them buildings do, by no means all of them.

Q. But they are in close proximity to the parish? A. Yes.

Q. They are usually on the parish grounds and owned by the parish itself? A. Yes.

Mr. Collins: Excuse me, Mr. Stanzler. Your Honor, I would like to note my continuing objection to this type of testimony as to whether the schools have crosses on them and whether they have [83] names on them because I do not think it is relevant.

Judge Coffin: Your point is that it should be focused on the activities of the teachers.

Mr. Collins: Of that which is subsidized, yes.

Mr. Allen: Your Honor, I just want to note my concurrence in Mr. Collins' objection.

Q. Now, how are the elementary schools financed? A. They are financed by the parish which supports them. Usually a tuition is charged to the students and the difference between the tuition and the cost of operating the school is made up from the general parish revenues.

Q. These tuitions are a very small portion of the operating costs, is it not? A. Well, no, the percentage has been increasing rapidly in the last couple of years. I think now it averages about 40 per cent of costs.

Q. And this increase has come up within the last two years? A. It is recent.

Q. I recall you and I having a discussion at Brown University one time and it was somewhat lower? [84] A. Oh, yes.

[85] Q. (By Mr. Stanzler) Now, from the parish funds which are included in the tuition that you say are paid, the parish pays the salaries and buys whatever supplies are necessary? A. Yes, sir.

Q. Now, within each of the classrooms, is there a cross or crucifix? A. In the great majority of them.

Q. And can you, inasmuch as Judge Bownes asked the question with respect to percentages, are you able to tell what percentage? A. No, I'm not, really.

Q. And there are also statues in the schoolrooms? A. Not necessarily in the rooms, but most of the schools do have statues somewhere within the building.

Q. And these depict religious situations? A. Yes, sir.

Q. And they do have paintings? A. In most cases, yes.

Q. And these are religious paintings depicting religious situations? A. Well, not exclusively. There is a considerable amount of secular decor too.

Q. Such as chairs and desks? A. Well, no, such as paintings of secular subjects and so forth.

[86] Q. But there are religious paintings in the schools? A. Yes.

Q. Do the classrooms have religious paintings? A. I couldn't say. I don't visit that many classrooms. I think it would vary quite widely.

Q. There is no question that when one visits a school one knows he is visiting a Roman Catholic Parochial School? A. Yes, that's true.

Q. Now, the class day. Is each class day started with prayers for each of the students in the class rooms? Does each class day start with prayers? A. Yes, traditionally. Prayers certainly at some time in the day are said. I would say usually during the beginning. They are usually said in the beginning.

Q. They are usually said in the homeroom of each of the students, so-called? That room which is the room that everybody, all the children report to when they commence the day? A. Yes, I think so.

Q. In each of these homerooms, there are lay teachers as well as religious teachers? A. Yes.

Q. And the prayers are conducted to your knowledge—

Mr. Collins: I object to that question.

Mr. Stanzler: I haven't finished the question yet.

[87] Judge Coffin: I understood, does each homeroom have a lay and a religious teacher?

Mr. Stanzler: Or a religious teacher.

Judge Coffin: All right.

The Witness: Yes.

Q. They don't have two teachers in each room? A. No.

Q. They either have a lay or a religious teacher? A. Yes, sir.

Q. When they commence the day prayers are supervised and conducted either by the lay teacher or the religious teacher? A. As far as I know.

Q. And during the course of the day there are religious classes? A. Yes.

Q. How much time, to your knowledge, is devoted to religion classes? A. One hundred and fifty minutes a week.

Q. Is that by a rule set forth in the handbook, 150? A. I believe yes. That's 30 minutes per day, or if they don't want to teach it every day, it has to add up to 150 minutes.

Q. Is that a requirement that is set forth in the handbook which guides the principals? A. Well, the weekly time allotment of subject is one of these items that comes out every year at the beginning of the [88] year in September. We vary a little each year according to changes in the curriculum, but that would come out annually.

Q. But basically the handbook for school or the guideline for school, which is Plaintiff's Exhibit 14 for Identification, does make reference, does it not, to the time to be devoted to the study of religion? A. Yes, sir.

Q. And in the study of religion, does this include, it is the study of the various tenets of the Roman Catholic religion? A. Yes, sir.

Q. It is not a study of the history of religion or anything of that nature? A. Not in elementary schools. Some of that is included, particularly in the upper grades.

Q. But primarily it's the Roman Catholic religion? A. Yes, sir.

Q. Now, these religious courses, they are taught by nuns only, is that correct? A. Well, they are taught by lay teachers, too. If the teachers haven't applied for supplement.

Judge Pettine: Would you read that back, please?

[89] (Answer to Question read back)

Judge Bownes: Well, Father, prior to this year, what was the general practice as far as the teaching of religious subjects was concerned by lay teachers?

The Witness: The lay teacher would teach religion if she wanted to, if she felt competent to, which some did and some didn't, but there was no policy at all that prevented a lay teacher from teaching religion, aside from being incompetent.

Judge Coffin: While you are being interrupted, Mr. Stanzler, Father Mullen, why wouldn't a lay teacher apply for supplement? You say if this teacher has not applied, I would have thought that everybody would have applied.

The Witness: Well, not all teachers are eligible to apply for supplement because not all of them were able to get a state teaching certificate; that's one reason. Another would be that a teacher's teaching schedule was not always able to be rearranged.

Judge Coffin: And would some of them be above the average level, that is, a cutoff under the law?

The Witness: For the salary level?

Judge Coffin: Yes.

The Witness: Not that I am aware of.

[90] Judge Coffin: Okay. Thank you.

Judge Bownes: Now, as I understand it, Father, the 150 minutes a week is required for religious teaching, and that

would have to be split up among the religious teachers and the qualified lay teachers, depending upon the ratio in the particular school?

The Witness: Yes, sir.

Judge Bownes: And if you didn't have any religious teachers, that is, sisters in a particular school, then the 150 minutes would have to be taught by lay teachers?

The Witness: Yes, sir.

Judge Bownes: All right, thank you.

Judge Pettine: Now, if I may ask one further question here, Father, since we are at it. In this question that was asked of you, whether or not the class day starts with a prayer, do the classes start with a prayer?

The Witness: Each individual class?

Judge Pettine: Does each class start with a prayer?

The Witness: I can't say for certain. I'm not that familiar with the inside of the schools, but it is my impression that no, that prayers are said at the beginning of the day, and in most cases, then only. In [91] some cases they may also be said at another time later on.

Judge Pettine: All right, thank you.

Q. (By Mr. Stanzler) Would this not also depend upon the teacher as well as if she wanted to commence her class with a prayer? A. Yes, it would be up to the teacher, I suppose.

Q. And certain principals, if they desire, they could set up that practice of commencing each day with a prayer? A. They could.

[92] Q. And during the course of the day are there prayers said; prior to lunch, for instance, or at the conclusion of the day? A. I don't really know.

Q. But that could be done. A. Could be done.

Q. And there are within the handbook of regulations—there is some guide to that; suggestions with respect to that, are there not? A. Yes, but that is one of the portions of the handbook that has been superseded by practice actually.

Q. Not by directive? A. No. Well,— Yes, all right, let it go at that. Yes, that is okay.

Q. What time of day is the religious course taught; the religious course? A. What time of day?

Q. Yes, if you know. A. Traditionally, it is the first period in the morning but in the last couple of years it has tended more and more to be scheduled throughout the day, part of the reason being this bill and the requirement of having only perhaps two or three teachers teach religion so they have to stagger it; but also because religion, like a good many other subjects, has become considerably more sophisticated in the last five years. Not every teacher— in fact, not every sister is [93] any more competent to teach it, and it has become more and more a specialized discipline.

Q. So that you are relying more upon individual trained teachers to teach the course in religion. Is that what you are telling us? A. Yes.

Q. This is a practice that has developed within the last year since the passage of the salary supplement bill, so-called. A. The passage of the bill speeded it up but the practice was introduced before the bill was passed. It is at least three years old, I should think.

Q. This is in order to achieve better competency in the teaching of the religious aspects of the school today? A. That is correct.

Q. Now the schools do have religious observances on certain holidays; that is, religious holidays, do they not? A. Yes.

Q. And how often does this take place? Does that depend upon the school or—I am rather unacquainted with the number of religious holidays . A. Well, let's see. There are maybe four a year on the average.

Q. And these are observances that take place within the school which all the children participate in? A. Well, the usual practice is to have a—on days like this either to have an assembly program during the normal portion [94] of the school day when assembly programs are held or else

to have a Mass during the lunch break in the parish church, so that if the children wish to attend Mass they can go on their lunch hour.

Judge Bownes. Did you say four, Father?

The Witness. About four days a year on the average.

Judge Bownes. In addition to Christmas and Easter what would the others be?

The Witness. Well, of course, Christmas and Easter they are not in school anyway. All Saints Day, November 1st; Ascension, which is normally in May;— Let's see.

Mr. Collins. Good Friday.

The Witness. Good Friday; no. Let's see. Are we out of school on Good Friday?

Mr. Stanzler. I think you are.

The Witness. I think we are not in school Good Friday. Let's see. I have got some of my staff down there. Could I ask them? Is that permissible?

Mr. Stanzler. Well, I think you will have an opportunity as Mr. Collins has indicated he is going to put you on the stand.

Judge Coffin. Yes, I think at the moment all we are interested in is that there are four.

Judge Pettine. If I may follow up, did I understand you to say, Father, a Mass they "may" attend?

[95] The Witness. Yes.

Judge Pettine. In other words, it is not compulsory that they attend.

The Witness. That is correct.

Q. Is a Mass held every day during the lunch hour? A. Not normally, no. In some parishes during Lent this is done, yes.

Q. Would this be the only time of the year that they would hold Mass during the lunch hour? A. Yes, I think so.

Q. And when these Masses are held, are the teachers expected to attend? A. No.

Q. Are Masses held immediately prior to the opening of the school day? A. Well, the normal daily parish Mass

would occur around 7:00 or 7:30, or something, in most parishes. But that seldom has any connection with the school.

Q. Now you say that there are sometimes assembly programs in the schools. Do these assembly programs sometimes include visiting missionaries? A. Yes.

Q. And the missionaries, as I understand it, inform the children and those present of the nature of their work? A. Yes.

[96] Q. What are some of the missionaries that do attend? A. Well, let's see. We have— Once a year, I think, is all that a school is allowed to have a visiting missionary come in on a program like this. And it is scheduled by the—let's see—the Diocesan Mission Program, so that it goes through the Diocesan Mission Office. And they schedule these people and they will come into a school, and each school will have one of these programs a year.

Q. It is just once a year? A. Yes.

Judge Pettine. Is this part of the vocations program? for schools, Father?

The Witness. No, but the vocation program operates the same way. The Vocation Office will schedule a program in each school once a year.

Q. What does the vocation program inclue? A. Well, I am not too sure because I don't have anything to do with it.

Q. What is meant by it? A. Well, it is a program to acquaint the children with the nature of the religious life; the life of a sister, the life of a priest; and to encourage children to think along these lines when they are considering their own future.

Q. Now do the assembly programs consist of— During the course of the year is that— Approximately how many times a year [97] is that during the course of the school year; these so-called assembly programs? I think what we mean by that is when all the children come together in a body. A. Are you referring to all assembly programs or just those that we have been talking about?

Q. All assembly programs. A. That varies a great deal with the school, depending to a considerable extent on the interest of the principal and her ability to gather together interesting programs. But we like them to occur quite frequently; well, once every couple of weeks.

Q. And these programs can range from civic matters to religious matters? A. Yes.

Q. After school do the children have extra-curricular programs? A. Yes.

Q. And these extra-curricular programs are held in the parish school? A. Yes.

Q. And some of these include programs which have a religious content to it? A. Yes.

Q. And these are run by whom as far as supervising position is concerned? A. Well, either by the sisters or the priests of the parish, the ones that have religious contact. [98] Q. What kind of programs would they be? A. Well, training altar boys, training choir boys, a mission—little mission society for the school to encourage missions. I don't know whether there are others but I don't really know what they do.

Q. Now during the course of the year do the teachers of the Roman Catholic Diocese school system attend a so-called Catholic Teachers Institute? A. Yes.

Q. And these include, do they not, both the lay and religious teachers? A. Yes.

Q. And I believe that is held just once a year, is it not? A. Yes.

Q. It is a two-day program? A. Yes.

Q. And general school work and practices are studied at these institutes? A. Yes.

Q. Do any of the institutes discuss the teaching of religion? A. Yes, occasionally.

Q. During the course of the institutes, which are probably to bring all teachers up to date, the programs do consist of ways of improving the teaching of the various courses, both secular and sectarian? [99] A. Yes.

Judge Coffin. I would like to ask Father Mullen: This may be beyond your personal experience but supposing a student is in a science course and remembers something he or she has learned in the religion course and asks the science teacher, "What is your explanation?" Has this happened?

The Witness. I really don't know, Judge. I am not a teacher. I never was.

Judge Coffin. I suspect if it happens, it happens not only in parochial schools but others as well.

The Witness. I should imagine so.

Judge Pettine. To put it differently: There are no regulations, are there, that would prohibit a teacher from discussing such a point should that arise in the teaching of a purely secular subject?

The Witness. That is right.

Judge Pettine. On this assembly is it compulsory they attend assembly? Do you have assembly observance on a religious holiday? Did I understand you to say that was one of the ways that you might observe a religious holiday at the school: by having a general assembly?

The Witness. Yes.

Judge Pettine. Is it compulsory they attend the assembly?

[100] The Witness. I would imagine it would be, yes.

Judge Bownes. I didn't understand your answer to Judge Pettine's question before that. Was the answer that there was a prohibition or there was not?

The Witness. No, there is no prohibition.

Judge Bownes. Can you tell me what the courses are that are taught in addition to the religious education course?

The Witness. All the usual subjects that are taught in the elementary school, all the traditional subjects: literature, reading, spelling, and so forth, mathematics, science, the social studies, art, music, physical education, and a foreign language—French in most schools.

Q. Just one further question, I believe, Father. This morning we made reference to the Citizens for Educational Freedom being devoted to obtaining aid for the nonpublic schools, and you made reference to the Middle West and some success attained there. Am I not correct in that many of the people—many of the schools that have been aided in the Middle West include not only Roman Catholic schools but the Lutheran schools? A. Yes, that is true.

Q. And that the—

Mr. Stanzler. I think— Excuse me just a moment.

(A pause)

Judge Bownes. Father, do you have a standard [101] curriculum of all the subjects taught in the grammar schools in the diocese?

The Witness. Yes, Judge.

Judge Bownes. Could you make it available to us—a copy of it?

The Witness. Yes. Actually, it isn't a full blown curriculum. It is a list of textbooks that are used and the time allotments for various subjects that are to be allotted. But, yes, that can be made available.

Judge Bownes. Could you have that tomorrow?

The Witness. Yes.

Judge Bownes. Thank you.

Judge Coffin. May I go back before we get started again? You say there is no prohibition if a science teacher was asked a question based on religion. Are there any materials for guidance of the teachers of a lay subject when questions stemming from a religious course are asked?

The Witness. No. I suppose we are going on the assumption that this sort of question doesn't really arise on the elementary level. In the high schools it would.

Q. Do I understand you to say that you don't anticipate students on the elementary level to raise these questions in science classes? A. Yes, that is what I said.

Q. The prayers— Just to clarify this, and I think the answer [102] is self-evident. But the prayers that are said at the commencement of the day are Roman Catholic prayers, are they not? A. They used to be. The prayers that are said at the beginning of the day now—it is a matter of practice for the individual schools, and I think much more we are getting into the practice which, I guess, is traditional in Protestantism of sort of free prayers, spontaneous prayer, and they compose it as they go along on the spot. Whether you could classify that as a Catholic prayer or not, I don't know.

Q. These children have all been brought up—

Mr. Stanzler. Strike that, please. I think I will let it go on your answer.

Q. Just one thing I want to clarify further. The home rooms sometimes do have lay teachers who are home room teachers. A. Yes.

Q. And if they are not religious teachers, then they are the lay teachers who are home room teachers. A. Yes.

Q. Just one— I don't know if you have had an opportunity to bring the statement that was read at the General Assembly with you. A. No, I haven't.

Q. But you would be able to bring it for us tomorrow? A. I certainly hope so. I will look for it diligently.

[103] Mr. Stanzler. I think that is all. Thank you, Father.

Cross-examination by Mr. Collins

Q. Father, while we are on this one question, do you expect as superintendent of schools that the teachers in your schools, who are teaching secular courses, are to inject religious content into the secular courses? A. No, I do not.

Q. We talked initially when you were on the stand about two bills that were in the Legislature. Were you in favor of the first bill? A. Yes.

Q. And that is the bill without an amendment. A. Yes.

Q. And is that the bill without a limitation as to the cost per pupil? A. Yes.

Q. Were you in favor of the amendment? A. No.

Q. Do you know who proposed the amendment? A. Not really.

Q. Did you learn of it after the amendment had been proposed? A. Yes.

Q. Father, with the passage of the Salary Supplement Act can you tell us in your capacity as superintendent of schools whether [104] there was an increase, decrease, or remain-the-same status with respect to the quality of teachers applying for teaching positions in your schools? A. We had a considerable increase in the quality of the teachers that applied this past year, yes.

Q. If you can, Father, tell us what your experience was in the summer of '68-'69.

Judge Bownes. How do you determine the quality of the teacher applicant?

The Witness. By their educational background primarily, how many—whether or not they have a Bachelor's degree or Master's degree, or, if not, how close they are to it; how many education courses they have taken; whether or not they have had student teaching or, hopefully, previous teaching experience.

[105] Judge Bownes: You mean that the applicants that applied had a more extensive educational background?

The Witness: Yes.

Q. What took place in the spring, summer of 1968-69 with respect to the recruitment, if you will, of teachers, secular teachers, in your schools? A. We had a very great difficulty recruiting a sufficient number of teachers. We had a very large turnover the previous year and we needed a large number and we simply were not getting applicants with a suitable educational background.

Q. What were you offering new applicants as a salary? A. $5,000.

Q. And what did you offer new applicants as a salary this year, this is '69-70? A. $6,000.

Q. When, Father, do you recruit teachers— .

Mr. Collins: Well, strike that.

Q. When will you be recruiting teachers for next year? A. Starting right about now.

Judge Bownes: How about the sisters and the nuns, are they paid, what is the system of [106] compensation for them?

The Witness: Yes, they are paid a standard salary. They are paid $1800 a year at the current scale if they have a bachelor's degree. If they have a master's degree they get $1900.

Judge Bownes: As far as educational background, how do the nuns and sisters compare with the lay teachers?

The Witness: Generally, they are considerably better.

Judge Coffin: I am bothered—perhaps this is not the time to explore mathematics, but if it increased from $5,000 to $6,000, what you offered between '69 and '70, and you have 98 schools or nearly 100, that would seem to be that each school has a little bit under $4,000 which would be four teachers on the average per school would get that. I just do not see how this money contained in the bill would enable you to raise salaries and offer new teachers $1,000 more.

Mr. Collins: I think, if I may, I can clear that up. I will ask you, Father.

Q. In order for a teacher to receive $6,000 this year, [107] assume for the moment that the state is released and committed to pay, what would the parish have to pay the teacher so that she or he would receive $6,000 a year this year? A. $5100.

Q. Now, the fact that the statute that we are talking about here—the effectiveness of it has been temporarily restrained and the fact that the issue is in doubt in this case, what role does that play in your recruiting of teachers for next year? A. It hinders us rather considerably because it is difficult for us to come up with a definite wage that we can offer teachers and when you go around

to the Teachers Colleges and try to recruit them and tell them you do not really know how much you are going to be able to pay them it is pretty hard to get a commitment out of them.

Q. How about the teachers that are presently teaching in your schools that are coming up for—

Mr. Collins: Strike that.

Q. Your teachers in your schools usually receive a contract for how many years? A. A year at a time.

[108] Q. How about the teachers whose contracts will expire, do you have any difficulty by virtue of the situation we find ourselves in with respect to maintaining these teachers? A. Yes.

Q. Is that for the same reason? A. Yes, we don't really know what we can offer them next year.

Q. Now, is there going to be an increase, insofar as you know, Father, an increase in the starting salaries which will be paid to teachers who begin this year in the public school system? A. In the public schools?

Mr. Collins: Yes.

The Witness: Oh, yes. Let's see, Providence has already settled for a scale of $7,000 to $11,000 and I think Newport has and also a couple of other places. That is going to be a standard or close to the standard for the state for next year.

Q. Now, if this Salary Supplement Statute is determined by this court to be unconstitutional, what will your school system offer starting teachers? A. I don't think we would be able to offer more than [109] $6,000.

Q. Have you had any experience, Father, with respect to competing with the public schools for the recruitment of teachers as they come out of schools or as they become available? A. Yes.

Q. What has your experience been? A. My experience is that we can compete for good quality teachers if our starting salary is within $500 of the public school scale. If the differential is greater than that we suffer and the greater the differential the more we suffer.

Judge Coffin: Did you say earlier that this bill, if it be held invalid, that you would not be able to offer more than $6,000 as a starting salary?

The Witness: Yes.

Judge Coffin: But in 1969 and 1970 you did offer $6,000. Is this including funds that the bill provided for?

The Witness: No, we offered $6,000. We contracted for it certainly hoping that we would get 15 per cent from the state, but we are committed to the $6,000 whether or not we get it.

[110] Mr. Collins: We may have some further evidence on that, Your Honors, that might do violence to that answer.

[111] Judge Pettine: The maximum of six thousand is what you can offer if the Court should find it unconstitutional?

The Witness: Yes.

Mr. Collins: That is for next year, Your Honor. For next year.

Judge Pettine: What are they paying this year?

The Witness: They are paying six thousand. Could I explain that a little, please?

Judge Pettine: Yes.

The Witness: Well, we offered $6,000 this year, and we hoped that the bill would pass, although we made commitments to the $6,000 bill and it had not passed, so we are committed at $6,000 this year. If the Court finds the bill unconstitutional and we know that we will have to pay the entire committed salary for the future, then we won't be able to offer more than $6,000, because we will in addition to the problem there, the great majority of the parishes are going to have to hire at least one more lay teacher next year than they have this year, and some parishes two or three.

Judge Pettine: That other $6,000 that is now being paid, Father, is the parish paid $5100 of that?

The Witness: Well, pending the decision [112] of this Court.

Judge Pettine: I'm just wondering where the other $900 is going to come from.

The Witness: Well, it will have to come from the parishes.

Judge Coffin: Assume the bill is held constitutional, then the parish would pay $5100 and the subsidy will amount to nine?

The Witness: Yes, sir.

Judge Coffin: That isn't within $500 of the new salary scale that Providence is having.

The Witness: Well, if the bill were held constitutional we could then offer perhaps $6500, knowing we would get 15% of that from the state and then the parish contributes a little bit more, and we could keep closer to the public school scale.

Q. (By Mr. Collins) The bill doesn't help you save money, the bill just makes you more competitive? A. That's right.

Judge Coffin: If you offered $6500, knowing that you could get subsidy of 15%, this means that your parishes would be paying something like fifty-five, fifty-six or fifty-seven hundred?

The Witness: Yes, sir.

[113] Judge Coffin: You say they are having a hard time paying fifty-one?

The Witness: That's right, that's true. The parishes are still going to be in difficulties either way.

Q. They would have to increase their efforts over the present in order to approach that $500 margin beyond which you were not competitive? A. Yes, definitely.

Mr. Collins: If I may have a moment, Your Honor.

Judge Bownes: Father, while they are conferring, has there been an increase, either gradual or precipitous in the number of lay teachers versus the number of religious teachers in the parochial grammar schools?

The Witness: Oh, yes. I would call it precipitous.

Judge Bownes: And based on your own experience, do you foresee this would continue?

The Witness: Yes, I do.

Judge Bownes: Do you care to make a prediction as to whether in the immediate future, say, within the next five years, schools will be staffed almost [114] 100% by lay teachers?

The Witness: That is entirely possible. I would not like to see it happen, but it is definitely possible.

Judge Bownes: Is it fair to say that ten years ago the number of lay teachers in parochial schools, grammar schools, were greater in proportion than they are today?

The Witness: Ten years ago about 8% of our teachers were lay teachers. Most of them were in the high schools. We had, oh, gee, I think we had about fifty lay teachers in the elementary schools out of a total of about 1,000, 1200 teachers ten years ago.

Judge Bownes: So based on your previous answer that as a rule the religious teachers are better qualified as far as educational background is concerned, and this crisis, if you will call it that, or dilemma that you face is due to the fact that the religious teachers have diminished and the need for lay teachers is greatly increased?

The Witness: Yes, definitely.

Mr. Collins: I have nothing further, Your Honor.

Mr. Allen: No questions, Your Honor.

[115] Mr. Stanzler: We have nothing further of the father except for the document that we asked him to bring tomorrow.

The Witness: Yes, thank you.

Mr. Stanzler: Your Honors, now, we had indicated that counsel would get together tonight to review that handbook and we will be glad to do that with respect to certain provisions. I do feel that then I would urge that the document, Plaintiff's Exhibit 14 for Identification, be admitted now. It has been testified to by Father Mullen that if it used as a guide, that each principal has it and if there are any modifications or amendments, it would seem to me that the defendants can introduce such modifications or amendments as they have for directives. I would urge

that it be admitted into evidence. We will be glad to point out to counsel and meet with counsel, but at any rate, I believe it should be admitted.

Judge Coffin: We will hear from counsel for the intervenors and the State, but at the moment, it is inclined to allow the handbook with the understanding that if there have been changes and if you can indicate those changes through working it out with counsel for the plaintiffs, what the changes are, or if you prefer, [116] if that's the only way that you can elicit it through testimony what parts of that handbook are not—

Mr. Collins: Your Honor, please. We frankly, we are confronted with a basic disagreement with respect to the other side. I have always been of the view that the proponents of the particular proposition is obliged to put in what is right and it is not incumbent upon me when this thing is in to then begin to wonder what part of it is going to be looked upon as relevant and what is not relevant, and that's why I really wanted the other side to tell me what parts they want to rely on, and then I can tell you whether we have objection to it or whether we don't, but when a document such as this is offered, I don't know. All I do know is that some of it has been superseded, some of it never went into effect, and some of it may be superseded by practice.

Judge Bownes: Mr. Collins, as I understand the position of the plaintiffs, they want to rely on the whole document as is, isn't that your position, Mr. Stanzler?

Mr. Stanzler: Yes, that is right.

Judge Pettine: You object to the testimony of Father Mullen to the effect that some of it has changed by directives. You say you want to rely on the whole document. If some of the document has not been used in [117] the school, what is the materiality?

Mr. Stanzler: We don't know.

Judge Pettine: What do you mean you don't know? Well, what are you offering? Are you offering something

into evidence that you don't have a specific thought in mind as to part of the proof of your case?

Mr. Stanzler: Yes, Your Honor, we have read the exhibit itself and to our knowledge up to this point, or up to the point of taking the deposition, there were some changes. There were some directives that had been issued to the various principals that would modify that. Other than that, the document contains all the things that we felt should be included within it, because it speaks for itself. It has relevance as far as we are concerned to show the operation of the school.

Judge Pettine: If it's not a part of the operation of the school, how can it be relevant?

Mr. Stanzler: The point is, Your Honor, that it would seem to me that in as much as the father has testified that it is the guide, that it is used by the principal, that each principal has it, it then becomes the burden of the defendant or the intervenors or even Father Mullen to tell us which portions are not, because it seems to me that inasmuch as it has been utilized, has [118] been put forward, it was given to the principals to help run their school system, it is a guide as to the school system, therefore, it should be and certainly is admissible for the purpose for which we intended to prove that it is what the schools are operating by.

Judge Pettine: But you are offering—you are the man who is offering this document, yet you are offering it and in one breath you are saying this is the guide and we think it is relevant, and you are conceding, however, from the very witness you put on the stand that part of it is not used.

Mr. Stanzler: I'm not conceding—

Judge Pettine: Well, it's your own witness and you didn't ask that he be put on as a hostile witness. I am not accepting him as a hostile witness unless you put it on the record that you intended it as such.

Mr. Stanzler: Well, I—

Judge Coffin: We will keep Exhibit 14 in the state of suspended animation with the hope that counsel will still be able to identify what is not accepted policy and what is. It is inconceivable to ask that we should attempt to decide this case without that kind of a document, and we are not inclined to be overly technical and imposing such a burden on the plaintiffs. On the other [119] hand, we are not desirous of doing this by installments, taking the whole thing and then deleting. We still think that it would be very helpful, a very helpful duty if both sides and all three sides would attempt to give us a package that even if it isn't all agreed upon at least where it is disagreed, it will be isolated and identified. We will rule on that tomorrow. If the plaintiffs rest, it will be with the understanding that this is unfinished business.

Mr. Stanzler: Thank you, Your Honor, then we will do that. We will rest subject to that and Father Mullen's bringing us the statement that was read to the General Assembly by the representative of the diocesan schools. We rest on those conditions. Thank you very much.

Mr. Allen: I don't know whether Your Honors want to take an afternoon recess or not.

Judge Coffin: We have a fresh reporter, I think we might just as well continue.

Mr. Allen: May it please the Court, I think the question here is whether the State preserve a posture of neutrality. Now, the largest part of the State's case, to put it rather baldly, is, "Here's a paper. Read it. Make up your mind." We submit, Your Honors, that by reading Mr. Wilcox's deposition, the general administrative outline of the program, its purpose and [119A] effect become pretty clear. However, we intend to put Mr. Wilcox on briefly to clear up a few minor points which have arisen one way or another and for one reason or another, we didn't feel that we wanted to question Mr. Wilcox extensively at the time of the taking of his deposition. Basically, we want to show that it is not a foregone conclusion that

this bill benefits only Roman Catholic parochial schools. It is not a foregone conclusion from the point of view of the present effect of the law as well as a foregone conclusion of the purpose of the law.

[120] My brothers may object that this is a fluid situation and Mr. Wilcox perhaps knows more about this today than he did on February 25th when his deposition was taken. And we also want to clear up and show that this was not necessarily established in the administrative sense with anybody's particular coaching or help. This was done by the State by itself. And we thus wish to show that there has been no favoritism towards any religion, including, in the Schempp terms, a religion of secularism.

With those remarks I would like to call Mr. Wilcox.

Edward F. Wilcox, Sworn.

Direct Examination

By Mr. Allen

Q. Mr. Wilcox, will you state your name for the record? A. Edward F. Wilcox.

Q. By whom are you employed? A. Rhode Island State Department of Education.

Q. And what position do you hold there? A. I am Associate Commissioner of Education for Research and Planning.

Q. On February 25th, 1970 in the executive offices of the department were you involved in any activity which is different from your normal daily routine? A. I offered a deposition, copy of which you have in your hand.

Q. Mr. Wilcox, I will tell you that the three judges sitting [121] here probably have not had an opportunity to read your deposition but they will, so that we needn't go back over that.

Now when we took your deposition you were asked at that time whether any non-Catholic schoolteachers had qualified for a salary supplement. Is that correct? A. That is correct.

Q. How did you answer it at that time? A. I had to check my records. I asked for time to do this. I checked my records and found that at that time there had been no teachers from non-Roman Catholic schools that had applied—that were eligible.

Q. Were you asked at the time of your deposition as to the—

Judge Pettine. Mr. Allen, just for the sake of the record, when you are referring to the deposition do I assume you are referring to Plaintiffs' Exhibit 13?

Mr. Allen. No, I think it is Plaintiffs' Exhibit 3.

Judge Pettine. Whatever number it is, I think we ought to have it on the record so we will know precisely what you are referring to.

Mr. Allen. It is Plaintiffs' Exhibit 1, your Honor.

Judge Pettine. Plaintiffs' Exhibit 13 must be a letter from Mr. Wilcox then.

Mr. Allen. Yes, your Honor.

Judge Pettine. You are referring to Plaintiffs' [122] Exhibit 1.

Mr. Allen. No. 1; yes, your Honor.

Mr. Allen. I have lost—May I have the portion of the question—

(Last question, as above, read by reporter)

Q. Were you asked at the time of your deposition on February 25th as to the eligibility of teachers at the Providence Hebrew Day School? A. I believe I was.

Q. Will you tell the Court now what is the status of the teachers at the Providence Hebrew Day School? A. We have received no applications from any teachers at the Providence Hebrew Day School.

Q. Now, as I understand the mechanics of this program, Mr. Wilcox, you mailed out materials which are now in evidence as Plaintiffs' Exhibit 4, which is a letter and some forms. You mailed this out at a point last fall. Is that correct? A. I believe you are referring to the September 15th letter from Commissioner William P. Robin-

son that contained a set of forms and asking the principals of the schools to return certain forms if their teachers were to apply for a salary supplement.

Q. And was the Providence Hebrew Day School—

Mr. Allen. Strike that.

[123] Q. Was one of these letters and sets of forms, one of these packets, addressed and mailed to the Providence Hebrew Day School, if you know? A. It was.

Q. And did you receive any response to that mailing? A. Yes, I did. I talked over the phone, I believe,—I don't know the person's name—with the secretary of the Providence Hebrew Day School; and I told her if she believed that the school was eligible, to complete the form which is Form 31 NPS which has been offered in evidence and is called the summary of expenditures.

Q. And because their Honors have not yet read the deposition, what does Form 31 NPS do for the Department of Education? What is it for, briefly? A. Using that form we are able to determine the average per pupil expenditure for the second preceding year of that particular school.

Q. Why do you want to make that determination? A. Because the statute states that the average per pupil expenditure in the second preceding year of the public schools shall not be exceeded by a nonpublic school.

Q. Now did you ever receive a written reply from the Providence Hebrew Day School? A. I received the summary of expenditures. I received no correspondence from that institution.

[124] Q. That is, Form 31 NPS. A. That is correct.

Q. And was the Form 31 NPS received by you from the Providence Hebrew Day School filled out? A. It was.

[125] Q. Now, when your deposition was taken, which is now Exhibit 1 in this case, referring to Page 33 of your deposition, I want to read back a question and answer from your deposition. The question asked you by Mr. Shine was: "Now, the two independent schools you refer to do not come or did not come and do not come from

within the definition of non-public schools; is that correct?" and you answered, "The Governor Center School did not. Since no teacher applications were received from the Providence Hebrew Day School, no definite determination was made in the case of their expenditures." Now, do you want to change that answer at this point? A. No, I do not. That is the correct answer.

Q. Now, why was your determination with respect to the Providence Hebrew Day School not definitive? A. Because no application had been received from any teacher at that institution.

Q. Had you received an application from that teacher, what would you have done next? A. Using the form, I would have determined the average per pupil expenditure for all education at the school. If that amount had been below the average per pupil [126] expenditure in the second preceding year in the public schools, the teachers in that school automatically would have been eligible for a salary supplement. If the amount had exceeded the average per pupil expenditure under the statute I would have visited that school.

Q. Now, will you tell us for what purpose you would have visited the school, would you tell us that next? A. In order to determine the percentage of the expenditures at that school that were for secretarian education and the percentage of expenditures at that school for secular education.

Q. Now, why would you be interested in making that determination or allocation? A. Because the statute calls for expenditures for—I hope I am using the right term now—for secular education only.

Judge Coffin: This has been strung out a little bit. Am I right in saying that if the Hebrew Day School had sent in or a teacher had sent in an application but if the list of expenditures had indicated they were above the per pupil average, even though the expenditures looked high you would have visited the school to recheck the allocation?

[127] Mr. Allen: I can clear that up, Your Honor. There is an assumption in here that Your Honor is not aware of and that we have been operating with for several weeks. Mr. Wilcox, on form 31 NPS, what expenditures are asked to be reported by your department?

The Witness: All of the expenditures of the school for instruction, for maintenance, for operation and so forth.

Q. Well, is there any distinction made on form 31 NPS between expenditures for secretarian purposes and expenditures for secular purposes? A. There is no distinction.

Q. Is it all lumped together? A. I would assume, yes.

Q. So that if the expenses of the school computed from 31 NPS ran too high, would they be excluded from the program, would their teachers be excluded from the program necessarily at that point? A. Not at that point, no. It would be necessary for me to determine the expenditures for secular education and separately from the expenditures for secretarian education.

[128] Q. Now, have you a form 31 NPS, filed with you by the Providence Hebrew Day School? A. I have.

Q. And you are familiar with, obviously, the average per pupil expenditure in the public schools? A. I am.

Q. Now, can you tell us whether on a cursory examination of form 31NPS whether or not it is likely that teachers at the Providence Hebrew Day School might qualify? A. I would have to determine the percentage of the total expenditures for secular education. My cursory examination showed that the overall per pupil expenditure at this institution exceeded the average per pupil expenditure in the public schools on the second preceding year.

Q. But no allocation has been made on their expenditures as between secular and secretarian education? A. There has been none.

Q. So that teachers at that school might qualify; is that a fair statement? A. It is possible.

Q. Now, in establishing the administration of this program, Mr. Wilcox, you were pretty much in charge of that, [129] weren't you? A. I was delegated the responsibility to administer the program.

Q. Now, do you recall any meeting that you had in the office building in which the Department of Education is housed, the Roger Williams Building, in the basement of the building, with a Mr. Earley and Father Mullen and some other people? A. On September 3rd, 1969, there was a public hearing held in the Department of Education conference room on the commissioner's regulations governing the payment of salary supplements.

Q. And was this hearing held as a—

Mr. Allen: Well, I withdraw the question.

Q. Did you convene that hearing? A. The hearing is convened under the Administrative Practices Act of the state of Rhode Island by the Commissioner of Education.

Q. Was there ever any other meeting in the basement of the Roger Williams Building with respect to this whole program or law that you recall that Mr. Earley or Father Mullen attended? [130] A. None that I know of.

Mr. Allen: You may inquire.

Mr. Collins: I have no questions, Your Honor.

Mr. Stanzler: No questions, Your Honor.

Judge Coffin: Mr. Allen, do you have anything more at this point?

Mr. Allen: I think I rest, Your Honor.

Judge Coffin: The intervenors?

Mr. Collins: Yes, Your Honor, I would like to call Mr. Earley, please.

John R. Early,

first having been duly sworn, testified as follows:

Direct Examination

By Mr. Collins

Q. Mr. Earley, where are you employed? A. Saint Francis Xavier School.

Q. And are you the principal there? A. Yes, I am.

Judge Bownes: Mr. Collins, I think you had better get his name and address.

Q. Would you please state your full name and where you [131] live? A. John R. Earley, 5 Cumberland Road, Riverside, Rhode Island.

Q. I understand you are the principal in the school? A. Yes.

Q. Do you also teach at the school? A. Yes.

Q. What course? A. Science, mathematics, social studies.

Q. Have you applied for a salary supplement? A. Yes, sir.

Q. Do you teach a course in religion? A. No, sir.

Q. Do you inject any religious content in the courses that you teach? A. No, sir.

Q. Do you have a copy of the Handbook that has been discussed here in court today in your school? A. Yes, sir.

Q. Do you refer to it in the day-to-day operations of your school? A. No, sir.

Mr. Collins: I have nothing further, [132] Your Honor.

Mr. Allen: No questions.

Mr. Stanzler: No questions, Your Honor.

Mr. Collins: Thank you, Mr. Earley.

Judge Coffin: The court would like to ask a few questions.

Mr. Collins: I beg your pardon.

Judge Coffin: We ask questions to get a little bit more of a feel from such a man as you who is in the field. We have Father Mullen whose jurisdiction is very broad. How big is the school of which you are principal?

The Witness: We have a student body of approximately 270 children. The classroom range is from kindergarten through Grade 6.

Judge Coffin: How many teachers or how are they allocated between lay and religious teachers?

The Witness: I have seven teachers, plus myself, and they are all secular teachers.

Judge Coffin: How many teach the religion course?

[133] The Witness: Two, Your Honor.

Judge Coffin: And how much time a week does each child in your school have for a course in religion?

The Witness: The average would be four 30 minute periods during the week.

Judge Coffin: What happened to the other 30?

The Witness: Situations differ from school to school and as administrator I felt that this was sufficient in this particular area that the other 30 minutes would be better utilized in language because we happen to have an ethnic school.

Judge Coffin: How many general assemblies do you have in the course of a month?

The Witness: Usually none, Your Honor.

Judge Bownes: None?

The Witness: Usually no general assemblies for the whole school during the month.

Judge Coffin: Do you have a room capable of holding your students?

The Witness: Yes, sir, Your Honor.

Judge Coffin: So you have very few [134] assemblies.

The witness: We have had perhaps three or four assemblies over the school year so far.

Judge Coffin: What can you tell us about the decor of the classrooms?

The Witness: The school is 10 years old and it is a very well built school. The decor or decoration of the rooms is what you might say basically the same as you would expect to find in any modern elementary school. We do have a crucifix in each room as far as religious decor and also there happens to be a statute in each room.

Judge Bownes: A statute of what?

The Witness: A saint, Your Honor.

Judge Pettine: Is your school in close proximity to the church itself, is this a parish school?

The Witness: Yes.

Judge Pettine: How far are you away from the church itself?

The Witness: The closest point would be about 30 feet.

Judge Pettine: Thirty feet from the [135] church?

The Witness: Yes, Your Honor.

Judge Pettine: How do you observe religious holidays?

The Witness: Well, they would be observed, if they were to be observed at all, within the—

Judge Pettine: I suppose I should ask you do you observe religious holidays?

The Witness: No, not out of context of the actual religious program—it would be no, Your Honor. Time is not taken off from school nor is any more time taken from the school program in observance of these holidays.

Judge Pettine: How about holidays that require Mass attendance?

The Witness: We have no religious holidays in our particular parish school in which Mass is mandatory. Mass is usually available in the church prior to the starting of school and also they may have an evening Mass there at which time the children would or would not go with their parents on their own volition.

Judge Pettine: Do you start the class [136] with prayer?

The Witness: No.

Judge Pettine: No prayers are said at the beginning and end of each day?

The Witness: At the beginning of the day it is normal in each class.

Judge Pettine: Are they said individually in each class?

The Witness: Yes, Your Honor.

Judge Pettine: If I understand correctly, at the start of each day each classroom starts the day with prayer?

The Witness: Yes, Your Honor.

Judge Pettine: A lay teacher leads the students in prayer?

The Witness: This is not mandatory. In many cases the children, if the teacher happens to be in conference at that time, the children will automatically take over. You might say that the teacher would take part in the prayer, but I don't know if I could adequately define it as leading the prayers.

Judge Pettine: Are these prayers the [137] standard prayers?

The Witness: Most of them, yes, Your Honor.

Judge Pettine: They are the standard prayers recited by Catholics?

The Witness: Yes, Your Honor.

Judge Coffin: The two teachers who teach religion, they teach other subjects?

The Witness: Yes, they both do, Your Honor.

Judge Bownes: Does the parish priest visit the school regularly?

The Witness: No, Your Honor.

Judge Bownes: At any stated intervals?

The Witness: At no times, Your Honor.

Judge Coffin: If the bill were to be upheld how would this affect the composition of your teaching staff?

The Witness: Well, if the bill is upheld it would change the chief of my teaching staff at all this year and, unfortunately, we are closing this year so I cannot make any statement on the future. This is our last year.

[138] Judge Pettine: Are there any non-Catholic students in your school, if you know, of course?

The Witness: No, I don't believe we have any non-Catholics at the school. We do have one non-Catholic faculty member, however.

Judge Bownes: What subjects do you teach?

The Witness: That I teach?

Judge Bownes: That are taught in school?

The Witness: The languages, arts, reading, writing, spelling, science, mathematics, music, social studies.

Judge Bownes: Social studies, does that mean history or is that something different?

The Witness: Well, history would be incorporated into it. History and geography are parts of social studies.

Judge Bownes: Talking about history, are you talking about history of the United States, history of Europe or—

The Witness: Depending upon the class, [139] Your Honor, the grade level. For example, the sixth grade would

be on Latin American, Africa, and on various grade levels they would take various sections of the world.

Judge Coffin: Do you have a school library?

The Witness: Yes, we do.

Judge Coffin: This, I assume, would have books on every subject?

The Witness: Yes, Your Honor.

Judge Pettine: It has Catholic literature?

The Witness: Oh, yes.

Judge Pettine: You say, "Oh, yes," you mean a predominance of Catholic literature?

The Witness: No, I mean we do not have—we have all literature rather, including Catholic.

Judge Pettine: All right.

Mr. Stanzler: I just have a couple of questions.

Q. (By Mr. Stanzler) How long have you been principal of Saint Xavier's School? [140] A. This is my first year.

Q. And prior to this year where did you teach, if you did teach prior to this year? A. I was at Saint Cecilia's School in Pawtucket.

Q. How long have you been teaching in the Catholic schools? A. This is my seventh year.

Q. But you were never a principal before? A. No, sir.

Mr. Stanzler: Thank you.

Judge Coffin: There being no further questions, we appreciate your coming. Thank you very much.

Mr. Collins: Mr. Moss, please.

Alan E. Moss,

first having been duly sworn, testified as follows:

Direct Examination

By Mr. Collins

Q. Would you state your full name, please? A. Alan E. Moss.

Q. Where do you live? A. I live in Fall River, 78 Congress Street.

Q. Are you employed? A. Yes, I am.

Q. Where are you employed? [141] A. I am employed by Saint Brendan's School in Riverside.

Q. What is your educational background at the present time? A. You mean where I went to school?

Q. Yes. A. Providence College and presently attending the Extension Division.

Q. What courses do you teach at this school? A. I teach math and reading.

Q. To what grades? A. Mathematics to the fourth grade, 5 and 6, reading is the seventh grade.

Q. Do you teach a course in religion? A. No, I don't.

Q. Do you inject any religious contents into the courses that you teach? A. No, I don't.

Q. Do you happen to be a Roman Catholic? A. No, I'm not.

Q. When you were hired, was there any discussion as to your religion or lack thereof? A. No, the question wasn't asked. I stated that I was not a Catholic.

[142] Q. To whom did you say that? A. I believe it was Sister Edward.

Q. What response did you receive? A. There was no response. She just made—if she said anything—at that time she said it made no difference.

Q. Did you do any teaching last year? A. Yes, this is my third year of teaching.

Q. Where did you teach last year? A. Saint Brendan's School.

Q. Same courses? A. Last year I had science and math.

Q. What did you earn last year? A. Last year it was $4,800.

Q. What was your contract for this year? A. It said at $5100 and then the salary supplement to make it $6,000.

Q. Do you intend, Mr. Moss, to stay at this school if the salary does not remain competitive with the public schools?

Mr. Stanzler: I object.

Judge Coffin: On what basis?

Mr. Stanzler: On the basis of his intention of remaining in the school. The question [143] is really what seems to me what his present status is and the salary that he is presently achieving whether he would for some reason or another go to another school system doesn't seem to be material.

Judge Coffin: It would seem to me we are getting into, while we are liberal, I would not think that this would have too much bearing on the merits what a given person intends to do.

Mr. Collins: If I may address myself, Your Honor, the statute which we are involved here, the statute is designed to increase and maintain the quality of secular education in non-public schools. Public schools by virtue of the fact that the non-public schools cannot compete, as a result of that, lose qualified teachers. I think it does have a relationship.

Judge Bownes: Well, we have already had the testimony of Father Mullen. We covered that with Father Mullen. You covered the subject in the abstract.

Mr. Collins: I will withdraw the question. I have nothing further.

Mr. Allen. No questions.

[144] Mr. Stanzler: Excuse me a moment.

Judge Bownes: I think I said something in my remark as to the "abstract" and what I really meant was generally. I change the word to "generally."

Q. (By Mr. Stanzler) Mr. Moss, just one or two questions; you contract is at the rate of $6,000 per year with your school? A. Yes, sir.

Q. You are presently being paid at the rate of $6,000 per year? A. No, I'm being paid on the basis of the $5100.

Q. How often are you being paid? A. Weekly.

Q. And you are being paid weekly for a period of how long? A. Forty weeks.

Q. And how much do you receive each week gross? A. You mean before deductions?

Q. Yes. A. Off hand I couldn't say, I'm not sure, but after deductions it's $99.76.

Q. But you don't recall the gross amount? A. No, off hand I don't know. We only receive a check. We don't receive—that has been taken care of, I couldn't say.

[145] Q. So as you calculate it you're being paid at the rate of $5100. Are you sure? A. I don't quite understand what you mean. There is a stipulation in the contract that the difference between that $5100 and the $6,000 will come fron the state, but right now I am being paid on the basis of $5,100 and not $6,000.

Q. So whatever your gross pay, you say you are being paid that gross pay times forty weeks would equal $5100? A. Yes, sir.

Q. Would you be able to find out for us what your gross pay is? A. I could.

Q. You signed a contract in May of 1969, referring to plaintiff's exhibit 22, which is this exhibit? A. Yes, sir.

Q. In May of '69? A. Yes.

Q. Do you know whether a salary supplement was enacted at that time? Do you know whether it was or not? A. No, I couldn't say for sure. I think originally the contract was drawn up for 48 weeks, but it was changed later on. It was talked about 48 weeks but if you figured 48 weeks weekly it would come—the take-home pay was $64.00 which wasn't—

[146] Q. That was included within the contract originally? A. No, it was talked about.

Q. Are you a graduate of Providence College? A. No, I'm not. Not at the present.

Mr. Stanzler: That is all.

Redirect Examination

By Mr. Collins

Q. (By Mr. Collins) Plaintiff's exhibit No. 22 bears a date of May and that purports to be a contract. Did you sign that contract in May? A. No, I didn't.

Q. When did you sign the contract? A. I believe it was more in September.

Q. Are you presently having a dispute with the Pastor over whether you are to get $6,000 if the bill doesn't pass? A. Yes, that is originally why it was not signed in May.

Mr. Collins: I have nothing further.

Madelyn C. Law,

first having been duly sworn, testified as follows:

Direct Examination

By Mr. Collins

Q. Would you state your name please? A. Madelyn C. Law.

Q. Where do you live? A. 45 Shenandoah Road, Warwick, Rhode Island.

[147] Q. Are you employed? A. Yes, sir.

Q. Where are you employed? A. St. Timothy's School in Warwick, Rhode Island.

Q. Are you an applicant for salary supplement? A. Yes, I am.

Q. Do you teach courses or a grade? A. I teach a grade except that I also teach second grade language so that I do not teach religion to my third grade.

Q. Do you teach a course in religion? A. No, I do not.

Q. Do you inject religious contents into any of the courses that you teach? A. No, I do not.

Q. Where were you teaching last year? A. St. Theresa School in Providence.

Q. What did you earn last year? A. I came in as a substitute teacher and I think near the end od January and I was paid the substitute rate which was $100 a week before any deductions.

Mr. Collins: I have nothing further, Your Honor.

Judge Pettine: Mr. Collins, do you have a deposition 24 on this lady?

[148] Mr. Collins: No, it's her contract.

Judge Pettine: That is her contract.

Cross Examination

By Mr. Stanzler

Q. (By Mr. Stanzler) May I just see the contract, exhibit 24—

Mr. Collins: Your Honor, may I ask one further questions?

Q. (By Mr. Collins) Would you tell us your educational background please. A. I have a bachelor degree from the College of the Sacred Heart, cum laude. I have 24 credits towards my Master's at Georgetown University. I passed my oral comprehensives. I am currently writing my thesis and I will receive my Master's degree, hopefully, in September.

By Mr. Stanzler:

Q. (By Mr. Stanzler) Mrs. Law, do you teach the third grade? A. Yes, normally.

[149] Judge Coffin: They may be no need to have you talk slower or faster. Are there any more questions, gentlemen?

Cross-Examination by Mr. Stanzler

Q. Mrs. Law, you teach the third grade? A. Yes, normally, sir.

Q. But you teach language for the second grade, did I understand you correctly? A. Yes, sir.

Q. And when you teach the third grade, you teach all the subjects? A. Yes.

Q. All but religion? A. Yes.

Q. Now, you teach at the Timothy School? A. Yes, sir.

Q. You taught there last year? A. No, I taught at St. Teresa's School last year.

Q. And where is St. Teresa's School located? A. In the Olneyville section of Providence.

Q. And in the St. Timothy School, do the classrooms have crosses in them? A. Yes, there are crucifixes.

Q. And is there a cross on the outside of the building? [150] A. Well, the school building is attached to the old church, which is no longer a church, so there is a cross on the building, but I don't know whether you would call it part of the school or not, it's just a vacant hall.

Q. Now, at St. Teresa's where you taught last year, were there any crosses or crucifixes in each room? A. Yes.

Q. And there was a cross or a crucifix on the outside of the building? A. Really, I don't remember.

Q. Does St. Timothy have a library? A. Yes, we do.

Q. And that has all forms of literature? A. Yes, it does.

Q. Including Catholic literature? A. Yes, not too extensive.

Q. And this year you are being paid at the rate of $6,000 per year? That is what you are being paid at that rate? A. Yes, sir.

Q. And there is nothing in your contract which indicates any difference in the event of your receiving any salary supplement? A. No.

Q. In this state? [151] A. No.

Q. Do you happen to be a Roman Catholic? A. No.

Q. Have you ever seen this handbook? A. No.

[152] Mr. Stanzler: Thank you, that is all.

Judge Coffin: You may be excused.

William A. Hanson,

first having been duly sworn, testified as follows:

Direct Examination by Mr. Collins

Q. Would you state your full name, please? A. William A. Hanson.

Q. Where do you live, Mr. Hanson? A. Narragansett, Rhode Island.

Q. What is your educational background? A. I have a Bachelor of Arts degree from Barrington College in history and social studies, minor secondary education.

Q. Are you an applicant under the salary supplement? A. Yes, I am.

Q. Where do you teach? A. Monsignor Matthew F. Clark School.

Q. What do you teach there? A. I teach science, reading, English, spelling, physical education, art and music.

Q. Do you teach a course in religion? A. No.

Q. Do you inject any religious contents in any of the courses you teach?

[153] Q. How long have you been teaching in this school? A. Seven months.

Q. Are you married? A. Yes.

Q. What does your wife do? A. She teaches.

Q. Where? A. At the Hamilton Elementary School in North Kingstown.

Q. Is that a private school? A. It is a public school.

Q. When you started teaching this year did anybody tell you how you were supposed to operate or function? A. No, not at all.

Q. Did you ask your wife for any help? A. Yes, I did.

Mr. Collins. I have nothing further, your Honor.

Cross-examination by Mr. Stanzler

Q. Mr. Hanson, have you ever taught before? A. No, I haven't. Well,—

Q. When did you graduate from college? A. 1968.

Q. And what did you do in the year in between '68 and '69? A. The U. S. Army said that I had to fulfill my debt to them.

Q. Is the Msgr. Clarke School located in Narragansett? [154] A. No, it is not. It is in between. It is located between Narragansett and Wakefield. I think it is right on the two town lines.

Q. In teaching these various subjects which you teach do you remain in one room or do you go to the various classrooms? A. I remain in one room except for gym and maybe music or art. And then we have a utility room which we can use.

Q. Does each of the classrooms have a cross or crucifix in the Msgr. Clarke School? A. I don't know if each of the

classrooms has a cross in it. I am not sure of that. I know the gym does.

Q. The gym does? A. I think so, yes.

Q. How about your classroom? A. I hadn't noticed until Friday, but it does.

Q. And you are being paid at the rate of $6,000 per year? A. Yes, I am.

Q. And that is your contract with the school? A. Yes, sir.

Q. In the event that you are permitted to receive the salary supplement, the amount that you will receive, what would you do with that? A. It would go to my bills.

Q. It would go to your bills. In other words, you would receive that amount over and above the $6,000? [155] A. Oh, no, no. Altogether it is $6,000. The salary supplement is included in that $6,000 salary.

Q. But if you should receive the money from the State, what would you do with it? A. I don't understand.

Judge Pettine. What do you mean by that, Mr. Stanzler? Do you mean personally what would he do with it?

Mr. Stanzler. I am just trying to find out whether or not he would return it to the school.

Judge Pettine. Why don't you ask him that?

A. (Continuing) Return it to the school?

Q. Yes. A. In which way?

Q. Would you return it to the parish principal? A. I don't understand.

Q. Don't you have an understanding with the principal of the school, with respect to the receipt of this money, as to whether or not you would return it if you received it from the State? A. No.

Q. No understanding whatsoever? A. No, I don't think so. Not that I know of, no.

Q. Did you ever discuss it with him? A. No.

Q. So that you would be receiving this money from the State over [156] and above the $6,000 per year. Is that your testimony? A. No, not that I understand; no. I think it is $6,000. That includes the State's subsidy. I am not sure if it does. I was listening to the other testimony about the contract, and I must admit I haven't read mine too well.

Q. But you are presently receiving payments at the rate of $6,000 a year? A. Yes.

Mr. Stanzler. That is all.

Judge Pettine. In other words, I think what you are asking is under the Act the money would be paid directly to him, and would he retain it or return it.

Mr. Stanzler. That is correct.

Judge Pettine. Do you have any understanding about that, Mr. Hanson?

The Witness. No, not that I know of, no.

Judge Coffin. You may be excused. Thank you.

The Witness. Thank you.

Mr. Collins. Your Honors, in view of the invitation this morning, there are a number of witnesses that I could put on to the same effect. At this stage, in view of that, I would suggest that Mr. Shealey, were he called to testify, would testify that he is a graduate of Boston University and Boston University Law School; that he is an applicant; that he teaches in one of these schools; that he doesn't teach a [157] course in religion and he doesn't inject religion in any of his courses; and, presumably, would testify in respect to many of the questions asked by the Court and also by the others probably the same way. There is no doubt, your Honors, that there are crucifixes, et cetera.

The same is true of Mr. McElroy who is an applicant. He would testify that he teaches in one of these schools; he teaches secular subjects; he teaches them in a secular way. He doesn't happen to be a Catholic. I think he also would testify he didn't know anything about the handbook.

And, finally, Miss Walter would testify that she is an applicant; that she teaches in one of these schools. I believe she teaches just mathematics—just mathematics. She doesn't happen to be a Catholic. She doesn't teach a course in religion and doesn't inject religion in any of the courses she does teach. And I don't believe she knows anything about the handbook either. She would testify that way, and her cross-examination would be the same thing.

With that, your Honors, the intervenor-defendants rest.

Judge Coffin. The Court appreciates, Mr. Collins,—

Mr. Collins. Excuse me.

Judge Coffin. —your fulfilling the request this morning.

Mr. Collins. I beg your pardon. We do not rest, your Honor.

[158] I have a stipulation with respect to the intervenor-parents:

"It is agreed and stipulated by and between the attorneys for the parties to this action that, if called to testify at the trial of this action, Cornelius A. and Margaret-Mary Cummiskey, two of the several Intervenor-Defendants in this action, would testify substantially as follows: * * * "

And the stipulation then goes on to recite how and what they would testify to.

And I would ask that this be marked as Intervenor— Or may we file it?

Judge Coffin. Mr. Collins, the Court feels that both the stipulation received this morning and this stipulation should be part of the evidence and marked as exhibits; the stipulation this morning being designated Stipulation A and the stipulation you have just introduced being Stipulation B. And both are in evidence.

(Stipulation re depositions of Edward F. Wilcox and John R. Earley marked Stipulation A; stipulation re Intervenor-parents, Cornelius A. and Margaret-Mary Cummiskey marked Stipulation B)

[159] Mr. Collins. Fine, your Honor. I have three extra copies, if the Court would—

And for the second time, your Honors, I would like to rest on behalf of the intervenor-defendants.

Judge Coffin. Does that conclude the evidence except for the supplementing of the record tomorrow; Exhibit 14 and the catalogue if Father Mullen is able to bring that, and the diocesan statement?

Would counsel after we recess come to the bench for a brief conference? I haven't consulted with my colleagues but I would assume that counsel would prefer not to com-

mence argument now but, rather, to begin that in the morning.

Mr. Pfeffer. Yes, your Honor.

Judge Coffin. And that has worked out as well. It gives counsel time to reflect. The Court will undertake to read the depositions tonight; at least, as many as reason allows. And we will convene in the morning at ten. I don't think there would be any reason for convening earlier. It would seem to me that ten would give us adequate time in the morning for as much argument as counsel would like.

Mr. Pfeffer. Yes, your Honor. We see no reason for coming in earlier.

Judge Coffin. So we will convene at ten, and the Court would like to see counsel at the bench.

Mr. Stanzler. May I just interject one thing? I [160] have been requested by an attorney sitting in the rear of the room whose name is Frederick Salisbury that he would like to appear and offer a brief, amicus curiae. Mr. Frederick Salisbury. I don't know if this is the proper time to do that or at the conclusion of the case but he would like, on behalf of his organization,—

Judge Pettine. Is he a member of the Rhode Island Bar?

Mr. Stanzler. No, he is not.

Judge Pettine. He is a member of what Bar?

Mr. Stanzler. I think he is a member of the Washington, D. C. Bar. Mr. Salisbury.

Judge Coffin. Mr. Stanzler, the Court will accept a motion for Mr. Salisbury to appear as amicus for the purpose of filing a brief. It would be subject to the same time requirements as the rest of you.

Mr. Stanzler. Mr. Salisbury is in the room and I will advise him of that.

Judge Coffin. Would counsel approach the bench?

(Bench conference)

(Adjourned at 4:25 p.m. until Thursday, March 19, 1970, at 10:00 a.m.)

EXCERPTS FROM TESTIMONY GIVEN AT HEARING BEFORE THREE-JUDGE COURT

Proceedings of March 19, 1970

* * *

[1] Judge Coffin: Before argument commences, gentlemen, we have some unfinished business from yesterday.

Mr. Stanzler: Yes, Your Honor. I would first like to offer the statement that Father Mullen had prepared and had read on his behalf to the General Assembly. We have that now. We have some copies prepared. I ask that it be marked.

The Clerk: That will be Plaintiff's Exhibit 27, Your Honor.

Judge Coffin: This may be marked Plaintiff's Exhibit 27.

Mr. Allen: Your Honor, I anticipate your ruling, but may my objection be noted? I think it is a standing objection in any event.

Judge Coffin: This is the diocesan statement that we talked about yesterday?

Mr. Stanzler: Yes, Your Honor.

Judge Coffin: Now, this is not Father Mullen's personal beliefs.

Mr. Stanzler: This is a statement that was read by Father Mullen for the Diocesan School Board to the Committee of the General Assembly that was considering the passage of the bill.

[2] Judge Coffin: And you object, Mr. Allen?

Mr. Allen: Yes, Your Honor, on the grounds of the McCray and also on the analysis of Mr. Justice Frankfurter in McGowan vs. Maryland on this point.

Judge Coffin: Yesterday when we considered Father Mullen's personal beliefs, we excluded that, then learned that there was a diocesan statement. There being objection, however, the Court rules that technically this is not admissible, even under our fairly liberal scope. We can see a difference between one testimony educed before a state hearing and a congressional hearing which has all the testi-

mony which is printed and considered by the congress as it deliberates. Therefore, we exclude this exhibit.

Mr. Stanzler: Very well, Your Honor. Before proceeding to the discussion of petitioner's Exhibit 14 marked for identification, I would like to make our position known on another point. In conference yesterday and at a bench conference the issue of the temporary restraining order was raised. After the conference of yesterday, counsel for the plaintiffs and in conjunction with consideration with the plaintiffs and a discussion, generally, by the plaintiffs of our position and in light of the testimony of Father Mullen concerning the plans for [3] the school year for the parochial, Catholic parochial schools, it is the position of the plaintiff and the position of counsel at this point that we have no objection to the vacating of the restraining order. With respect to the handbook, Plaintiff's Exhibit 14 for Identification, counsel did meet last night. I think if I may refer to Mr. Collins and Mr. Pfeffer, they will go into the various points that have been agreed upon page by page or item by item.

Mr. Pfeffer: Your Honor, we worked last night through the lunch hour and we have reached somewhat of an agreement. Mr. Collins is here to correct me if I don't accurately relay it. First, the plaintiffs still urge that the document as a whole is admissible. It's relevant and admissible. In respect to those parts of the document which the defense contends are no longer in effect, where indeed, perhaps, have never been in effect, we agree as follows: the written directives testified to by Father Mullen which have been sent to all the school principals which are now being duplicated in Mr. Stanzler's office so there will be enough copies, they will be introduced into evidence, perhaps as a supplementary exhibit to the handbook, and to the extent that anything in those directives is inconsistent with anything in the [4] handbook, to that extent, the directives supersede the relevant position in the handbook. Now, to the extent that they do not, it is our agreement, our stipulation, that a number of specific paragraphs or sentences

in the handbook which will be elicited by Mr. Collins, here, he has the list and we have a list here. They will be read into the record with the understanding that if Father Mullen were called he would testify that although these have never been formally repealed or superseded by any written document, nevertheless, they are not now in effect or not being carried out. Is that a correct statement, Mr. Collins?

Mr. Collins: Or perhaps may never be.

Mr. Pfeffer: Is that correct?

Mr. Collins: Yes.

Mr. Allen: Yes.

Mr. Pfeffer: This is the stipulation which we have agreed to. Now Mr. Collins will go over it, please.

[5] Mr. Collins. I will merely speak of the pages where there are alterations.

Page 1—Oh, yes, I have extra copies if the Court would want a copy too. I, first of all, hope, your Honors, that all the pages are in that book. We have discovered many times there are pages that are missing.

Page 1, the bottom of that page, item C. There probably is a copy in every principal's office. I have no idea whether there is one in the convent. And the testimony shows there is not one in every classroom.

Page 2, the top of the page, the sentence reads:

"The Diocesan School Board, with the Bishop presiding, * * *."

The fact of the matter is he doesn't and hasn't.

Judge Bownes. He does not?

Mr. Collins. He does not.

The second paragraph has never happened.

Down at the bottom of page 2 there is a line that says:

"The instructions of the Diocesan Superintendent of Schools must be faithfully and accurately observed at all times."

Father Mullen says that that would be very nice but he has serious doubts about whether that is true.

On page 3, item B, the last clause of item B, speaks of a Diocesan Honor Society. That is defunct. I don't know [6] for how long but I think for some time.

Also on page 3, under item C, IV, that is not so.

On page 4, item IX, we just have a question mark. I don't know whether it happens or doesn't happen. No one seems to know. Item X has never happened.

Judge Pettine. Which page is this, please?

Mr. Collins. Page 4; X on page 4.

On page 5, under the heading "Diocesan and Community Supervisors" we merely have question marks beside the first paragraph and paragraph A. We really don't know whether that is carried out or what happens.

On page 6, item E and item F have never been observed.

On page 7, under B IX, the answer to that is no, there is no such thing as regular faculty meetings. There obviously are faculty meetings but—

On page 8—There is no difference with respect to page 8. However, on page 8 there is a quote from an encyclical of Pius XI that, I believe, came out in 1925 or '27 or '29. We have informed the other side that that encyclical is not binding and there is no evidence with respect to it. But the fact of the matter is it was never followed in this country anyway.

Mr. Pfeffer: Your Honor please, we don't concede to that last qualification. We believe that the encyclical has been in effect in this country, and there is a tremendous [7] amount of literature to show that it has been. We will accept the statement to the effect Father Mullen does not consider it binding.

Mr. Collins. If I may, your Honor, I specifically pointed out this to you last night, Mr. Pfeffer, because there is not one jot of evidence with respect to the encyclical. This Court is going to be concerned with what the facts are, properly supported. And I wanted him to know that that was our position. So I don't accept the qualification that he—I don't wish to accept the qualification that he offers.

Judge Bownes. As I understand it, what you are say-

ing. Mr. Collins, is if Father Mullen were testifying, he would say this quotation is not binding, and, further, that it is not applicable today. Is that correct?

Mr. Collins. No. As a matter of fact, I have no quarrel with this particular thing. I wanted my adversaries to know that even though this was in here, that any other portion of the encyclical was not binding, that they would not thereafter come in and write a brief that the encyclical over here said this and the encyclical over here said that. I am saying that part over here is not binding. And the only way we can know what portion of that encyclical, if any, is relevant to this case is to put someone on who has something to do with these schools.

[8] Judge Bownes. What do you say to the quotation?

Mr. Collins. Fine! But I merely want the Court and the other side to know that.

On page 9, item C is not so. On page 9, under 8, item A, sometimes teachers are interviewed by Father Mullen's office and sometimes they are not, as the testimony has disclosed. He would like it if they all were. I guess we settled upon the expression, "It is a hope more than a reality."

On page 10, at the top of the page, II, the same is true there. It is a hope rather than a reality.

On page 13, under D I, apparently that has not been in effect.

Judge Bownes. You mean the quotation is not in effect?

Mr. Collins. Yes, under D I, "Summer retreats should not be scheduled."

Mr. Pfeffer: Your Honor, I think that the understanding is that the only part of page 13 which is accepted, which is not in effect, is D I. That was our understanding.

Mr. Collins. Right. On page 14, at the top of the page, item IV, that has not been in effect.

Page 15, item 4, "Faculty Meetings." Theer again faculty meetings are held but it is not on a regular monthly basis.

[9] On page 16, under 8, "Religious Instruction," item D, that has never been in effect.

Judge Pettine. What was that last, please?

Mr. Collins. Page 16, under 8, item No. D, "Effective September, 1966," is the way it begins. Also, on page 16, item 9, "Religious Activities," the second sentence, "* * * the manner in which the curriculum is taught, * * *" in some respects never was in effect; and those where it was, it is not so any more.

[10] Mr. Collins: Page 19—well, I don't think there is anything on 19 you are interested in.

Mr. Shine: Page 22 is the next one.

Mr. Collins: Page 22, Item C (IV) that has never been in effect. I think that is one the other side will agree with me has indeed never been in effect.

Page 24 and Page 25, is there anything you are interested in?

Mr. Pfeffer: No.

Mr. Collins: Page 25 under "Physical Education," I think we all agree that if there is a diocesan syllabus for physical education there isn't one.

Judge Coffin: No syllabus?

Mr. Collins: That's right, there is not.

Page 27, under "Correspondence," Item C, it states, "All correspondence to the state Department of Education must be channeled through the Diocesan School Office." That has never been so. On Page 29 under "Guidance," how much, if any, guidance there is at the elementary level is pretty small.

Page 30 under Item 32, "Mission Program," [11] the last sentence, "This is especially true in the social sciences as well as religion," that has never been in effect.

Judge Bownes: Where are you now?

Mr. Collins: Page 30 under "Mission Program." The clause, "This is especially true in the social sciences," that has never been in effect.

On Page 39, the item "Daily Prayers," that is not followed. The fact of the matter is that the prayers are said

probably in the morning and I gather in some instances at the end of the day.

Page 41, there never has been a lesson plan book, at the top of the page, Item 9, lesson plan book.

Judge Coffin: Continue.

Mr. Collins: There are a number of other changes I am skipping over that have nothing to do, I am sure, with the issue.

Page 54. I have skipped over a lot of things in between. I don't think any of them have anything to do with the issue. Page 54, under "Awards," Item 4, "Diocesan Honor Society." As stated earlier, that is defunct.

[12] Under the Appendix C on Page 63—

Judge Pettine: Did you say 53?

Mr. Collins: 63. Your Honors will notice the contract is supposed to be written. Your Honors, perhaps, have already observed there are many kinds of contracts used.

Page 66, 67, obviously that's out of date. That has to do with $3,000 for teachers.

There are certain other items Your Honors asked of Mr. Moss who was testifying yesterday, how he was being paid. He is the gentleman that said, "I don't know my gross pay but I know my take home." He came in this morning and gave me the indication that he is paid $127.50 gross pay every week for 40 weeks. According to my arithmetic, that figures out to $5100 a year. His contract reads $6,000. He is being paid at the rate of $5100.

Your Honors also asked for curriculums with respect to schools. I have obtained that and I will offer it.

Judge Bownes: 28.

Judge Coffin: This will be marked Intervenor Defendants' Exhibit A.

[13] Mr. Allen: If Your Honor please, before we leave the Handbook entirely, I have no objection—

Judge Coffin: Just a moment, Mr. Allen. This has been offered and I assume there is no objection and it may be admitted as Intervenor Defendants' Exhibit A.

Judge Bownes has asked me to ask counsel to clarify the meaning of the figures in the columns. We assume the numbers refer to minutes per week.

Mr. Collins: Yes, Your Honor.

Mr. Allen: Your Honors, going back over the Handbook, I participated in the analysis which has just been read to the court. I concur in it. I would like to note for the court that on Page 27 of the Handbook there is an item, Item Number 27, "Officially Adopted Textbooks." I think the court can take judicial notice that the state has adopted an Allen-type statute which was approved by our Supreme Court in the Bowerman case cited in my brief and that would necessarily and by operation of law supersede portions of Section 27 on Page 27.

Mr. Pfeffer: One further clarification. The Handbook, including those items on which there is no [14] dispute. uses the word "Ordinary." I think for the record it should appear that the word "Ordinary" means the bishop who is presiding and who is the chief ecclesiastical officer of the diocese.

Mr. Collins: You embarrass me, yes.

Judge Coffin: That is the Ordinary, the bishop of the diocese.

Mr. Pfeffer: Sometimes there is more than one bishop. There is an auxiliary bishop. It means the chief ecclesiastical bishop. I am not a Catholic, but I know—

Mr. Collins: You can fool me.

There is one final item, Your Honor. If Father Mullen were called back to testify he would testify that the school day in the Roman Catholic parochial schools is one-half hour longer than the minimum school day prescribed by the Rhode Island Compulsory Attendance Law so as to accommodate the teaching of religious instruction for one-half hour.

[15] Mr. Stanzler: In view of all these statements concerning the handbook we would move admission of the handbook as a full exhibit subject to the statements of counsel and the reservations that were made and with the

addition of the directives which should be here shortly, which we can offer as one full additional exhibit when they arrive.

Judge Coffin: Exhibit 14 may be admitted subject to your qualification and the directives which will be received, Mr. Clerk, will be a supplement to Exhibit 14.

The Clerk: 14A, Your Honor, call it?

Judge Coffin: Yes, 14A. The Court wishes to express its appreciation to all counsel for their after-hours cooperation in accomplishing the proper assessments or the proper definition of the present handbook. The Court responds to Mr. Stanzler's or Mr. Pfeffer's opening remarks with regard to the temporary restraining order. The Court takes it that the State has no objection to the lifting of the order and that all counsel are agreed, is that correct? Mr. Allen?

Mr. Allen: I'm delighted, Your Honor, yes.

Judge Coffin: Not withstanding, there may be problems if things are done which have to be undone.

[16] Mr. Allen: I think I can say that won't be my problem.

Judge Coffin: Therefore, the Court announces that Judge Pettine's temporary restraining order will expire as of the close of business today. Now we approach the argument stage, and we have not discussed the order in which counsel desires to argue.

Mr. Allen: Your Honor, please, there is one small item of business left before we close the case. I have discussed this with Mr. Stanzler and we are a little unclear on the law. Certainly interrogatories were posed to plaintiffs on matters involving the facts of their standing. Mr. Stanzler believes they are, in fact, the original answers have been filed with the Court. Mr. Stanzler believes they are now part of the record of this case. My understanding of the rules is that at the present time they are not evidence, so if the Court rules that they are part of the record of this case, then I have no further business. If the Court rules they are not part of the record, not evidentiary, I would

move at this time, I wouldn't—I withdraw that—I would ask my brother, Mr. Stanzler to stipulate that if called and asked the questions that were posed to them in the interrogatories that the several plaintiffs would answer the questions as disclosed [17] in their answers to interrogatories filed.

Judge Coffin: Why isn't the clean solution to offer the interrogatories as evidence in the case? Why isn't that the clean solution?

Mr. Stanzler: We have no objection, Your Honor. We stipulated to the essence of those facts in an earlier stipulation and it's a written stipulation.

Judge Coffin: Does that not cover it, Mr. Allen, the earlier stipulation?

Mr. Allen: No, Your Honor, in the sense that the interrogatories asked for taxes paid and that those dollar amounts are not covered by the stipulation, but are covered by the answers to the interrogatories.

Mr. Stanzler: I would only say that if my brother says that if the plaintiffs did testify they would so testify, we will abide by the ruling of the Court with respect to whether the Court wants to admit the interrogatories and the answers into evidence.

Judge Coffin: You are not objecting to the use of the interrogatories?

Mr. Stanzler: Not at all, Your Honor.

Judge Coffin: Perhaps even though there has been a stipulation, perhaps the interrogatories should be introduced and marked as defendant exhibits.

[18] Mr. Allen: I will offer them as respondents' or defendants' exhibits A, B, C, D and E.

Judge Coffin: Do you have them?

Mr. Allen: They are in the record.

The Clerk: There are five here, Your Honor. I will marke them A, B, C, D and E.

Judge Coffin: All right, thank you.

The Clerk: Mr. Allen has handed me one set of interrogatories entitled "Defendant Robinson's Interroga-

tories," which is directed to each and every plaintiff. Shall I mark that F?

Judge Coffin: Is this the same kind of an interrogatory?

Mr. Allen: Those are the questions to which the five exhibits are the responses.

Judge Coffin: The questions to the interrogatories addressed to all of the plaintiffs will be marked Defendant's Exhibit A and the responses will be Exhibits B through F.

(Questions to interrogatories introduced and marked Plaintiff's Exhibit A—Responses to interrogatories marked Plaintiff's Exhibits B through F)

Plaintiffs' Exhibit No. 1

[Deposition of Edward F. Wilcox,
Associate Commissioner of Education]

* * *

[1] EDWARD F. WILCOX

first having been duly sworn, testified as follows:

Examination by Mr. Shine

Q.1. What is your name, sir? A. Edward F. Wilcox.

Q.2. What is your position? A. I am Associate Commissioner of Education for Research and Planning in the Rhode Island Department of Education.

Q.3. How long have you had that job, sir? A. I have held that job since July 1st, 1963.

Q.4. Were you connected with the Department of Education prior to that time? A. Prior to that I was Associate Commissioner of Education for Instructional Services and I held that position from July 1st, 1959.

Q.5. Now, are you familiar with the so-called salary supplement law for non-public school teachers? A. I am.

Q.6. Now, in your capacity as Associate Commissioner, is it your responsibility to administer this law? A. I was delegated by the Commissioner of Education to develop the forms necessary for the law's administration [2] and to accept applications, determine eligibility and prepare the necessary papers for transmission to the State Controller.

Q.7. Is it fair to say that from the standpoint of the Department of Education you are in charge of the administration of this law? A. That seems to be a fair statement.

Q.8. Now, this is the law that was passed in the spring of 1969 by the Rhode Island General Assembly; is that correct? A. Yes.

Q.9. Now, under the law do you have authorization to engage a special staff for the administration of this law? A. Would you repeat the question?

(Whereupon pending question was read by the reporter)

The Witness: As I understand it, there are no administrative provisions in the act except to direct the Commissioner of Education to perform certain actions under the law.

Q.10. So that as far as you know there is no special funding for purposes of administering the law; is that correct? [3] A. I know of no special funding for this purpose.

Q.11. Now, how many people in the Department of Education would you say have been involved in working on the administration of this law, sir? A. To a greater or lesser extent, the Commissioner of Education, myself, a clerk-stenographer, a clerk-typist, and the Chief of Administrative Services, all on a part-time basis, of course.

Q.12. Now, when did you first undertake to carry out the administration of this law after it was passed? A. Approximately July 1st, 1969.

Q.13. And at that time what steps did you take in that connection? A. Under the direction of the Commissioner, I began to prepare drafts of proposed regulations for him to examine and asked for revisions and to, in the end, develop a set of regulations under the act.

Q.14. And were those regulations subsequently adopted by the Commissioner under the act? A. A set of regulations was adopted by the Commissioner, the exact date of which I do not know.

Q.15. Do you have a copy of those regulations?

(Whereupon witness handed a stapled [4] document to Mr. Shine)

Q.16. And this three-page document you have just handed me, Mr. Wilcox, constitutes the regulations which were

adopted by the Commissioner under this law; is that correct? A. That is correct.

Mr. Shine: I would ask they be marked as plaintiffs' exhibit.

(Whereupon three-page document, regulations of the Commissioner of Education, was marked as Plaintiffs' Exhibit No. 1)

Q.17. Do you, sir, have a copy of the statute as it was passed? A. I have a copy of what I suspect is it. It is H 1765, Substitute A.

Q.18. As far as you know, that is the form in which the law was passed; is that right? A. Yes.

Q.19. There appears to be handwriting at the top of this document which says, "Chapter 246, P.L. 1969;" is that your writing, sir? A. That is my writing. All of the notes on it are my writing.

[5] Mr. Shine: I would ask this be marked Plaintiffs' Exhibit 2.

(Whereupon a photostatic copy of H 1765 A, previously adverted to by the witness, was marked as Plaintiffs' Exhibit No. 2)

Q.20. Now, in connection with having these regulations approved, were they submitted to any parties in interest before they were approved by the Commissioner, by you or by the Department of Education?

Mr. Allen: I object. I do not understand the intent of the question or the thrust of the question.

Mr. Shine: Do you understand?

The Witness: I don't understand the question.

Q.21. The question is: between the time you started to work on these regulations and the time that the regulations were approved by the Commissioner, did you or the Department of Education submit the proposed regulations to anyone for consideration by them? A. Not that I know of.

Q.22. Was there a hearing on the regulations? A. There was a hearing held on September 3rd in the [6] downstairs conference room.

Q.23. And was there notice published of that hearing, sir? A. I would assume that there was. It was under the Administrative Procedures Act. Of necessity, there must be a notice published.

Q.24. And other than that possible notice that was given, you know of no other parties to whom this regulation was submitted for consideration or suggestion? A. I hesitate because I may have conferred with other members of the department.

Q.25. But was there anyone else outside of the department with whom you conferred regarding these regulations? A. I cannot recall.

Q.26. Was there anyone else in the Department of Education who had responsibility for assisting with the formulation of these regulations or was this your sole responsibility? A. It is the usual procedure—I cannot say what the Commissioner does when I submit a draft of something for his consideration. He may very well ask other members of the department, but I would not necessarily be aware of it.

Q.27. Now, subsequent to your working on these regulations, [7] what steps did you take in connection with the administration of the law? A. I held a meeting with the State Controller and members of his staff, a representative from the Division of Methods—and I am trying to find other members. The members present were Mr. Charles Hill, Mr. Peter Mazzeo, Mr. Donald Taft, who represented Mr. John Cicillene, the head of the Division of Methods, Mr. Fred Andreozzi, and myself. It is necessary under state regulations to involve the Division of Methods when forms of any type are prepared and it was for this purpose that the meeting was held and also to seek the advice of the State Controller on what items might of necessity be included in the forms so that his accountability responsibilty would be taken care of.

Q.28. Were these all state employees who were at this meeting? A. Yes, they were.

Q.29. And subsequent to that meeting, what procedures did you follow, what steps did you take? A. I drafted a set of preliminary forms. In fact, the first draft was done on June 28, 1969. I started work [8] July 1st, but the first draft of forms was done on June 28. The first revision of that draft was on July 3rd. Only July 11th I submitted the forms designed to the members of that group with whom I met and apparently that was the final draft of the forms that were prepared and subsequently used for purposes of the act.

Q.30. Did you consult with others regarding the forms to be used here that you have just described you prepared? A. I am certain that I consulted with the Commissioner of Education. I am certain that if there was anything in the draft documents that did not meet state specifications I would have been so notified by the people in that group who also had responsibilities for seeing to it that the accountability factor was taken care of.

Q.31. Did you consult, with respect to these forms, with anyone outside of the Department of Education? A. Not that I know of.

Q.32. Do you know if Commissioner Robinson did? A. I have no idea.

Q.33. Thereafter, what further action did you take in connection with the administration of the law? A. Well, there was a hearing, as I noted, on September 3rd. [9] As a result of the hearing, the final draft of the regulations was submitted to the Commissioner and, as I say, I don't know exactly upon which date he approved these regulations.

Q.34. Then what followed with respect to administration? A. On September 15th a letter from the Commissioner of Education to the principals of non-public schools was directed. Do you wish a copy of this?

Q.35. Were there enclosures with that? A. There were enclosures.

Mr. Shine: May I make the suggestion—could you hand me the letter with the enclosures attached to it so we can see exactly what was sent out?

Q.36. You have now handed me a letter under Commissioner Robinson's stationery, dated September 15, 1969, addressed to "Principals of Non-Public Schools," attached to which are four additional enclosures; is that right? A. That is correct.

Q.37. Is that the material that was mailed out by your department under this law on September 15, 1969? A. That is the material that I directed to be distributed.

Q.38. And was it so distributed? A. I would assume that it was under the direction I gave [10] my staff, the direction to do this. I assume that it was done.

Mr. Shine: I would ask that this letter with the enclosures be marked as Plaintiffs' Exhibit.

Mr. Allen: I have no objection.

(Whereupon letter dated September 15, 1969, from William P. Robinson, Jr. to Principals of Non-Public Schools, was marked as Plaintiffs' Exhibit No. 3)

Q.39. Now, Mr. Wilcox, Plaintiffs' Exhibit 3, which you have just described, that was sent, according to your testimony, to the Principals of the Non-Public Schools; is that correct? A. Yes.

Q.40. It was not sent to teachers in the non-public schools, was it? A. No, it was not.

Q.41. Was there any material sent by your department on September 15th, 1969, directly to the teachers in the non-public schools? A. Not that I am aware of. It did not go out under my direction.

[11] Q.42. Is it likely that it would have gone out under someone else's direction, sir? A. I have no idea.

Q.43. Well, you were in charge of this program, weren't you? A. Yes.

Q.44. Is it not probable that anything that went out would go out under your direction and your direction only, sir?

A. I cannot speak for the Commissioner or his staff. This material, as noted, was a Commissioner's letter.

Q.45. Who prepared it? A. I imagine I did.

Q.46. You were in charge of the program; is that right? A. I am in charge of the program.

Q.47. You directed that these materials be sent? A. Be sent to the principals of the non-public schools.

Q.48. But you had no materials sent to the teachers at that time? A. There were no materials sent to the teachers at this time.

Q.49.And you know of no other materials that were sent? A. I know of no other materials that were sent directly to teachers.

[12] Q.50. Now, one of the forms that was sent out, sir, is contained in Plaintiffs' Exhibit 3 calls for certain financial information from the non-public schools; is that correct, sir? A. That is correct.

Q.51. Now, what was the purpose of your requesting that information, sir? A. There is a section in the act that states that to be an eligible non-public school the per pupil expenditure in average daily membership must not exceed the average per pupil expenditure in the public schools for the second preceding year in the same grades.

Q.52. Is that the entire requirement of the statute that you have just referred to on that point, have you read those words from the statute, sir? A. No, I did not. I read them from my memory. If you would care for me to read Provision 16-49-2 under "Definitions"—

Mr. Shine: Fifty-one.

This is what it says here, 16-51-2, "Definitions." The first definition: "Non-Public School. Except such schools whose annual per student expenditure for secular education equals or exceeds the [13] average annual per student expenditure in the public schools in the state at the same grade level in the second preceding fiscal year for school operations as determined by the Commissioner of Education."

Q.53. So that it was in order to comply with that requirement of the statute or to get information as to that provision of the statute that you sent out this material? A. That's correct.

Q.54. Seeking financial information on the non-public school; is that correct, sir? A. That is correct.

Q.55. Now, as a result of your sending through these forms, were various materials returned to you by the non-public schools as a result of your request? A. Many non-public schools returned completed Form 31 NPS.

Mr. Allen: Mr. Shine, at this time I would suggest that a Xerox copy of Pages 1306 through 1311 of the Public Laws of Rhode Island, January Session, 1969, showing Chapter 246, as enacted, be substituted for Plaintiffs' Exhibit 2.

Mr. Shine: I have no objection. I am agreeable to that.

[14] Q.56. Now, I take it that based upon the materials that were returned to you by the non-public schools in accordance with your request, you then determined what teachers and what schools were qualified for this assistance; is that correct, sir? A. Yes.

Q.57. Now, when these materials came back, in order to obtain consideration by you, was it not necessary that the financial information that was requested be supplied by the schools? A. This was so supplied.

Q.58. Now, did you examine the financial material and information that was provided you by the non-public schools that responded in each case? A. I did.

Q.59. And did you determine from that information what schools and, accordingly, what teachers in those schools were qualified for this assistance? A. Yes.

Q.60. And did you do that based upon the financial information that was supplied in accordance with the language you have just read to us from the statute? A. Yes.

[15] Q.61. Now, directing your attention to the statute, I believe the statute excludes from the definition of non-public schools "schools whose annual per student expendi-

ture for secular education equals or exceeds the average annual per student expenditure in the public schools in the state at the same grade level in the second preceding year for school operations as determined by the Commissioner of Education." That is the language of the statute; is that right? A. If you read directly from the statute, yes.

Q.62. Now, did these forms that were returned to you provide you with sufficient information to determine the annual per student expenditure for secular education by the applicants that were applying here? A. Actually, no. It provided the total expenditure and it was determined that no eligible school's expenditure exceeded the public school expenditure, so we more than obtained—I mean, we obtained more than the necessary information.

Q.63. You say it was determined that no school's per pupil expenditure for secular education exceeded the public school's expenditure; is that what you are saying? A. No. I said no expenditures exceeded it because the [16] form does not make a request for expenditure for secular education only.

Q.64. In other words, your forms do not request that information as to what was spent per pupil for secular education? A. It does not.

Q.65. It does not request that information? A. It does not.

Q.66. Accordingly, you did not have that information when it came to determining what schools and what teachers were qualified; is that right? A. On the otherhand—

Mr. Shine: Excuse me, is that correct:

The Witness: Yes.

Mr. Shine: All right. Go ahead. Did you want to explain your answer?

The Witness: On the otherhand, the financial information that I did receive applied to the per pupil expenditure for public schools and still qualified the schools as eligible non-public schools.

Q.67. Well, when the statute excludes schools who have a certain annual per pupil expenditure for secular [17] education, don't you feel it is necessary to determine what the annual per pupil student expenditure is for secular education for each school who wants to apply to determine whether or not it is qualified, doesn't the statute require that?

Mr. Allen: Objection. You may answer.

The Witness: The statute requires that expenditures for secular education not exceed, but our forms were designed in such a way that they included all education and it was determined that qualifying schools did not exceed the public school expenditure for all their education.

Q.68. You think that your forms and the way you have administered the statute in this respect complies with the statute?

Mr. Allen: Objection. You may answer.

The Witness: I believe so.

Q.69. That you made no determination as to each applying school's annual per pupil expenditure for secular education; is that right? A. No.

Q.70. And requested no such evidence from non-public schools? A. We requested no such information.

[18] Q.71. Did you have any communications subsequent to September 15, 1969, with the non-public schools in general as opposed to following individual inquiries? A. Yes. I had been in communication with various principals of non-public schools and the Diocesan Superintendent of Schools.

Q. Who is that, sir? A. Father Mullen, and I also met with the principals of the Diocesan schools prior to the opening of school to describe the operation of the act.

Q.73. Is that Father Mullen? A. Not only Father Mullen, but the principals of all of the Diocesan schools.

Q.74. How many people are you talking about? A. I would imagine that present were not only pastors and principals, there might have been a couple of hundred.

Q.75. Where did that meeting take place, sir? A. It took place at the Cathedral complex.

Q.76. What Cathedral is that? A. The Roman Cathedral in the City of Providence, Saints Peter and Paul, I believe the name is.

Q.77. And that meeting was attended by Father Mullen and [19] other administrators of the Diocesan schools; is that right? A. That is correct.

Q.78. And by principals of Diocesan schools and some of the pastors of those schools? A. That is correct.

Q.79. When did you say that meeting took place? A. I don't recall the date.

Q.80. Was it before school opened? A. It was before the opening of school. It was held at the same time that, according to Father Mullen, that he passes the annual directions for the operation of the schools.

Q.81. In other words, was it a special meeting for your presence? A. It was not a special meeting for my presence.

Q.82. Other administrative matters were taken up by the Diocesan schools at that time? A. I was not present when these matters were taken up, but I would imagine that the meeting was called for several reasons.

Q.83. What was your participation, just a portion of the meeting? [20] A. Yes.

Q.84. And how did you participate, sir? A. I just explained the operation of the act and at that time I also, for clarification purposes, distributed copies of the preliminary forms. They were not at that time final or at least I did not consider them as such.

Q.85. And this was before the regulations had been approved? A. I don't know. I don't remember the exact date. I could check on that for you.

Q.86. You said "forms," you mean the forms that subsequently had not been yet finalized? A. That is correct.

Q.87. About how long did you attend that meeting, sir? A. Fifteen, 20 minutes.

Q. Did you attend any similar meetings for any other groups of non-public school administrators or principals or teachers? A. No, but I did meet with some in my office and I answered and I gave the same information to them over the phone. I know of no other organization—I mean, it was a convenience matter for me to do it in this manner.

Q.89. Other than that meeting, you answered specific inquiries [21] from people; is that right? A. Yes.

Q.90. By telephone or people who came to your office asking for information? A. That is correct.

Q.91. Did you have additional conferences or discussions with administrators or principals or teachers of the Diocesan schools in connection with the administration of the statute? A. No.

Q.92. You, I think, testified a few moments ago that you spoke or conferred with Father Mullen, did you speak with him on any occasions in addition to the meeting at the Cathedral complex? A. I talked with Father Mullen to arrange my presence at this meeting. I know of no time during which I discussed the Salary Supplement Act with Father Mullen. It might very well have been I might have met him in the corridor here or at various times and we may, in passing, make a comment or two about the Salary Supplement Law, but there has been no formally arranged meeting for the purpose of the discussion of the act.

Q.93. Did you have occasion from time to time to seek [22] information regarding the operation of the Diocesan schools in connection with this program, did you give him a call? A. Prior to the enactment of the act, I inquired of Father Mullen to determine the number of lay teachers that were employed by the Diocesan School System.

Q.94. And was that on one occasion you spoke to him prior to the enactment, at least with respect to getting information? A. As well as I can recall, yes.

Q.95. Other than meeting him informally from time to time? A. That is correct.

Q.96. Did you make inquiries of other organizations or other non-public school administrative officers who re-

quested such information? A. Yes, I did. I not only did that, but I compiled prior to the enactment of the act a list of the number of teachers. Of course, being responsible for the Division of Statistical Services, it is part of the responsibility of that division to obtain information on teachers annually. This was prior to the enactment of the act and I really don't quite remember the source of the information, but I compiled something.

[23] Q.97. So that prior to the enactment of the law you had obtained information as to the number of teachers in both the parochial schools as well as in the so-called non-parochial schools? A. Non-Diocesan schools because if you will note on that list there are several independent religious-oriented schools.

Q.98. Those categories that you have just described, are those the two categories of non-public schools in the state?

Mr. Allen: I object. I think he described three categories.

The Witness: There are as many categories of non-public schools as one would care to develop. In the State Department of Education we have a census handbook that we develop and there are the Diocesan schools, the independent schools. In the independent school category are all non-public, non-profit institutions, secondary and elementary. I mean, it makes no difference whether they are religious oriented or not. It is just for purposes of convenience. We take the Diocesan schools, and I guess all other schools—we call all other schools independent schools.

Q.99. Let me ask you this, sir: with respect of the [24] categorization of non-public schools, has it been a practice from time to time of the Department of Education to categorize non-public schools in the state as either parochial schools, on the one hand, or independent schools, sir, on the other hand?

Mr. Allen: Objection. You may answer.

The Witness: I don't know what your meaning of the word "parochial school" is.

Q.100. Prior to the enactment of the law, did the General Assembly request a breakdown from the Department of Education as to the number of elementary school teachers in the parochial schools and the independent schools?

(Whereupon pending question was read by the reporter)

The Witness: As far as I know, the General Assembly never made such a request. It is customary, however, when legislation is introduced that carries an appropriation for the department concerned to develop a fiscal note. We are asked, "How much is this going to cost us?" We were asked this question on this particular proposed legislation. In [25] order to develop a cost figure it was necessary for me to know approximately the number of non-public school teachers who might be eligible under the proposed statute.

Q.101. Was such a fiscal note prepared by the department in connection with this considered program? A. It was.

Q.102. And do you have a record of that fiscal note? A. I do.

Mr. Shine: May I see it, sir?

Q.103. You have handed me, sir, what appears to be a form, "State of Rhode Island and Providence Plantations, General Assembly, Fiscal Note Request Number 58, Bill Number H-765," and at the bottom it says, "Prepared by Department of Education," and it is dated April 9, 1969; is that the fiscal note request that you referred to and which you had prepared? A. That is the request that I am referring to.

Mr. Shine: I would like that marked as Plaintiffs' Exhibit, please.

Mr. Allen: Well, I will object on the ground that there is no testimony at this point that this is, in fact, the way the program was finally [26] adopted and at this time I suggest that it be marked for identification until we may agree later that it may become a full exhibit.

Mr. Shine: At this time I would ask that it be marked as a deposition exhibit.

(Whereupon Fiscal Note Request was marked as Plaintiffs' Exhibit No. 4)

Q.104. Now, the bill that is referred to in that Fiscal Note Request is H-1765, do you have a copy of that bill, sir? A. I do.

Mr. Shine: May I see it, sir?

Q.105. And this was the bill that was introduced but was not enacted, but was amended and was subsequently passed as H-1765, Substitute A?

Mr. Allen: Objection.

The Witness: I don't know.

Mr. Shine: I would ask that this be marked as an exhibit.

Mr. Allen: I object as to relevance

(Whereupon Bill Number H-1765 was marked as Plaintiffs' Exhibit No. 5)

Q.106. Now, Mr. Wilcox, are you familiar with the provisions [27] of H-1765 as it was originally introduced?

Mr. Allen: Objection.

The Witness: I am not at this time.

Q.107. Did you ever read it, sir? A. I am sure that I must have if I prepared a fiscal note on it.

Q.108. Now, I direct your attention to the definition section of that proposed bill on Page 3 and at the same time refer you to the "Definitions" section under the bill as it was enacted as H-1765 A, which is here as Plaintiffs' Exhibit 2, and I refer you specifically to the definition of non-public school in those two places. Would you examine those, sir? A. Yes.

Q.109. Now, in the bill as originally submitted, is there any exclusion for non-public schools relative to annual per pupil expenditures?

Mr. Allen: Objection.

Mr. Shine: Is there.

Mr. Allen: You may answer.

The Witness: I see none.

Q.110. But there is in the bill as it was finally passed; is that right?

[28] Mr. Allen: Objection. You may answer.

The Witness: There appears to be.

Q.111. Now, directing your attention to Plaintiffs' Exhibit 4, under the definition of non-public schools, would that definition include both parochial schools and independent schools as described in Exhibit No. 4?

Mr. Allen: May I have the question read back, please?

(Whereupon pending question was read by the reporter)

Mr. Allen: Excuse me a moment. I object. You may answer.

The Witness: Exhibit 4, the fiscal note, develops a cost figure that includes parochial schools and independent schools. It was developed for Bill Number H-1765.

Mr. Allen: I confirm my objection by a motion to strike at this point.

Q.112. So that the information that is provided in Exhibit 4 is provided with the understanding on your part that the bill would cover both the so-called parochial schools and independent schools; is that correct?

[29] Mr. Allen: Objection.

The Witness: I prepared the fiscal note using the definition that appeared in the proposed legislative act, H-1765.

Q.113. So that, therefore, when you prepared this information you believed that both parochial schools and the independent schools, as described in Exhibit 4, would come under the definition of "non-public schools" under H-1765; is that correct?

Mr. Allen: Objection. You may answer.

The Witness: Exhibit 4 develops a cost figure for both parochial schools and independent schools.

Q.114. Is there any question in your mind that the definition in H-1765 was to cover parochial schools when you prepared that fiscal note?

Mr. Allen: Objection.

The Witness: The fiscal note was prepared only in that manner—only as a convenience.

Q.115. Let me ask you this, Mr. Wilcox: under the definitions of non-public schools, as it was ultimately passed by the General Assembly, with the exclusion relating to annual pupil expenditures, are there any independent [30] schools in the State of Rhode Island that qualify for that aid that you know of? A. There may very well be. I would not know. The participation in the law is entirely voluntary.

Q.116. Have there been any applications by independent schools that have provided you with information upon which you have concluded that any independent schools qualify for this aid?

Mr. Collins: I would like to object. As I understand it, you do not make applications by the school but it is teacher applications.

Q.117. Well, these forms you have provided for the non-public schools come back from non-public schools, don't they? A. The application forms come back from the teachers. It is necessary to obtain Form 31 NPS from the schools which is the summary of expenditures.

Mr. Shine: That is what I am referring to.

Q.118. The material that comes back from the schools, was there any material that came back from independent schools that allowed you to determine that any independent school was eligible for this aid? A. I received a summary of expenditures, Form 31 NPS, from [31] two so-called independent schools, neither of which qualified under the statute.

Q.119. Which schools were those, sir? A. The Governor Center School and the Providence Hebrew Day School.

Q.120. Why did those two schools not qualify? A. Because their average per pupil expenditure, it appeared that their annual per pupil expenditure exceeded the annual per pupil expenditure for the public schools in the second

preceding year. May I also state that examination of the expenditure data is not made until such time as applications are received from teachers in those schools and no request, no teacher applications were received from the Providence Hebrew Day School. Teacher applications were received from the Governor Center School.

Q.121. Is it your testimony that neither of these independent schools qualified because of their coming within the exclusion under the definition relating to annual pupil expenditures? A. I do not consider that there is any exclusion in the act.

Q.122. Isn't there an exclusion from the definition of non-public [32] schools under 16-51-2?

Mr. Allen: Objection. You may answer.

Mr. Shine: Where it says, "Except such schools," et cetera, doesn't that—

The Witness: If this is what you consider to be an exclusion, yes.

Q.123. Well, doesn't that language mean that certain calculations are made and if the calculations come within the language of that phrase that those schools do not qualify as non-public schools for aid? A. I believe, Mr. Shine, that you are making an assumption. Schools do not qualify, teachers qualify.

Q.124. My question is: doesn't that "except clause," starting from the word "except," doesn't that mean that certain calculations as to per pupil expenditures are to be made and if those calculations bring the school in line with the language of the "except clause" that those schools do not come within the definition of non-public schools and, therefore, their teachers are not eligible for the salary aid; is that correct? A. I would assume that that is a correct statement, yes, sir.

[33] Q.125. Now, the two independent schools you refer to do not come or did not and do not come within the definition of non-public schools; is that correct? A. The Governor Center School did not. Since no teacher appli-

cations were received from the Providence Hebrew Day School, no definitive determination was made in the case of their expenditures.

Q.126. Did they provide the expenditure information to you? A. They did.

Q.127. Did you make any calculations on the basis of that information? A. I did. It appeared that they would not—their teachers would not qualify. If there had been any applications, I certainly would have recalculated as carefully as possible in order to determine their teacher eligibility.

Q.128. Now, directing your attention to Exhibit 5, which is the initial form of the Salary Supplement Bill as it was introduced, would either of those schools, the independent schools you have referred to, come within the definition of non-public schools if that bill had been enacted?

Mr. Allen: Objection. You may answer.

The Witness: May I say an aside, please?

[34] Mr. Allen: You have my objection.

The Witness: Yes.

Q.129. And, therefore, presumably the teachers in those schools would have qualified for this aid if the original bill had been passed; is that right?

Mr. Allen: I object.

The Witness: Yes.

Q.130. Now. do you know the annual per student expenditure in the public schools for schools in the State of Rhode Island? A. I do.

Q.131. Is that one figure per grade or do you have an average figure, how is that calculated by the department? A. That is calculated on the basis of expenditures per pupil in Grades one through eight.

132. Q. How long has the department been making those calculations? A. I guess long before I was born.

Q.133. Many years? A. Many years.

Q.134. Does your department have information as to the annual per pupil expenditure of non-public schools in the

State of Rhode Island? A. We do not, except that that was furnished under this [35] particular statute.

Q.135. Are you in your capacity generally familiar with the operations of the non-public schools in this state? A. I believe I am, not necessarily in my capacity as an Associate Commissioner for Research and Planning, but for many years I was Associate Commissioner in charge of Instruction and as such dealt with the operation not only of public schools but participated in many activities in which the non-public schools also were participating.

Q.136. Do you personally know if there are any independent schools in the State of Rhode Island who come within the definition of non-public schools as enacted in the law so as to make the teachers eligible for this aid? A. There may very well be several that have not applied.

Mr. Shine: I am asking if you know of any?

The Witness: I would not want to make a statement that this or that school is or might likely have a per pupil expenditure less than the public schools, but my familiarity with the operation of independent schools leads me to believe that, perhaps, there may be some.

[36] Q.137. Is it fair to say that probably most of the independent schools do not come within the definition under the statute as it was enacted? A. That is possibly a fair statement.

Q.138. Is it a fair statement? A. Rhode Island independent schools—most Rhode Island independent schools probably would not meet the qualifications stated in the act.

Q.139. Of your own personal knowledge, do you know of any who you think would meet the qualifications? A. There are several that I think might.

Q.140. But they didn't apply? A. They did not apply.

Q.141. Do you have any reason to know why they did not apply for this aid in the event that they might have been qualified?

Mr. Allen: I object on the ground that it calls for speculation. You may answer.

The Witness: No more so than many parochial schools or so-called Diocesan schools did not apply. They, perhaps, believed they would prefer not to have the support.

Q.142. Was that, in fact, the case with respect to some of the [37] schools, that some of them did not want to apply because they did not want the support?

Mr. Allen: May I have that question?

(Whereupon pending question was read by the reporter)

Mr. Allen: I object. There is no showing that he has any knowledge and so his answer would be entirely speculative.

Mr. Shine: That is the reason for my question, to find out if he does know.

Mr. Allen: You may answer.

The Witness: I have some forms returned from one school with a note at the top stating, "The pastor has not accepted this plan."

Mr. Shine: May I see that, sir?

Q.143. What school was that from, sir? A. Saint Mark's School, 43 Poplar Drive in Cranston. I have correspondence from one or two other schools in which they state that they are not participating in the plan for various reasons.

Q.144. Are any of these independent schools? A. I don't believe so.

Q.145. Do you, sir, have a list of all of the teachers who did [38] apply and who have applied for this aid? A. I do.

Q.146. And do you also have a list of those teachers who have been determined by you to be eligible under the statute? A. I do.

Mr. Shine: I would like to take a look at those, please.

The Witness: That is a copy of the list of applicants.

Q.147. Do you have the other list, sir? A. What is the other list?

Mr. Shine: Of those who have been determined eligible, or is that on the same list?

The Witness: If you took the ones off there—if you want the other list that I had prepared—

Mr. Shine: Yes, if you please.

The Witness: Since this is a progressive matter the two may not check out completely.

Q.148. You have handed me two lists, sir, one entitled, "List of Payees, Chapter 246 of Public Laws of 1969," is that the list of teachers whom you have determined qualified under this law, sir? [39] A. Is there a date on that? At that time, yes.

Q.149. As of approximately what date is that, sir? A. February 16th.

Q.150. And the first list which you have handed me is entitled, "Non-Public School Teachers Salary Supplements," containing simply names and addresses, and that is a list of those teachers who applied? A. That is correct.

Q.151. And only some of whom were determined subsequently to be eligible; is that correct? A. That is correct.

Mr. Shine: I would ask that the latter list be marked as a Plaintiffs' Exhibit.

Mr. Allen: Note my objection on the ground of relevance.

(Whereupon stapled document entitled "Non-Public School Teachers Salary Supplements" was marked as Plaintiffs' Exhibit No. 6)

Mr. Shine: I ask that the list entitled "List of Payees" be marked as a Plaintiffs' Exhibit.

Mr. Allen: Objection.

(Whereupon document entitled "Chapter [40] 246 of Public Laws of 1969" was marked as Plaintiffs' Exhibit No. 7)

Q.152. Mr. Wilcox, referring you to Plaintiffs' Exhibit 7, the list of payees whom you determined eligible for this aid, are there any teachers in independent schools, so-called, who are shown on this list as qualified for this aid? A. I believe not.

Q.153. In fact, are all of the teachers who are listed on this document as being eligible for this aid not teachers in various Roman Catholic Parochial Schools? A. I would have to check that out. I would not want to make a categorical statement that that is so.

Q.154. Are substantially all of them? A. Substantially all of them, I would assume, are.

Q.155. Are there any that you know of that are not teachers in the Catholic Parochial Schools? A. I don't know.

Q.156. How long would it take you to find out with certainty as to whether there were any that were not teachers in the Catholic Parochial Schools? A. I would have to go back through my records and check against each school code there to determine whether or [41] not the school in which the teacher is employed is a Diocesan school or a Roman Catholic School and that, again, would be my judgment also.

Q.157. Do you have any reason to believe that any of these teachers are not teachers in the various Catholic Parochial Schools?

Mr. Collins: Objection. You have asked him that and he has answered it. The question has been asked and answered.

Q.158. Are there any schools that you have determined qualify to have their teachers paid this aid which are not Catholic Parochial Schools? A. Again, I would have to go back through my records and determine this.

Q.159. How long would that take you, sir? A. Oh, if I were to do it now it might take me a half to three-quarters of an hour.

Mr. Shine: I would request that you do that, sir, so we could have that information and an answer to those two questions.

The Witness: I would need that material.

Mr. Shine: Yes, I have no objection to [42] letting you have the material.

Q.160. Do you have forms which have been filed by a John R. Earley?

Mr. Allen: I object. I don't see what relevance that has.

Q.161. Do you have the forms? A. May I look? If his name appears on one of those lists, why I would assume that I have the forms. His certificate number is 34160. I have on this list of payees a John Richard Earley of 5 Cumberland Road, Riverside.

Mr. Shine: May I inquire of counsel for the intervenors if that is the Mr. Earley who is one of the intervenors?

(Off the record colloquy)

Q.162. Do you have the financial information supplied by Mr. Earley's school in conjunction with his application, sir?

Mr. Shine: I would ask that this form, Form 41 NPS, for non-public school teacher salary supplement for John R. Earley be marked as a Plaintiffs' Exhibit.

Mr. Allen: I ask that it not be [43] marked and that a copy be marked in its stead.

Mr. Shine: No objection.

(Whereupon Form 41 NPS relative to John Richard Earley was marked as Plaintiffs' Exhibit No. 8)

Q.163. You have just handed me a non-public school report of expenditures and membership for Saint Francis Xavier School, 160 Orchard Street, East Providence, Rhode Island, signed by Manuel Rego, Pastor, I believe; is that the financial information for the school that Mr. Earley teaches at? A. Yes.

Mr. Shine: I ask that that or a copy of it be marked as an exhibit.

(Whereupon Form 31 NPS relative to Saint Francis Xavier School was marked as Plaintiffs' Exhibit No. 9)

Q.164. Let me ask you, Mr. Wilcox, has the department made inquiry in any manner as to whether or not any

of the schools whose teachers have been determined eligible for this aid, whether those schools have complied with the provisions of Title 6 of the Civil Rights Act of 1964?

[44] Mr. Allen: I object.

The Witness: May I answer?

Mr. Shine: Please.

(Off the record colloquy)

Mr. Allen: All right, on the record. There are many, many aspects of the Civil Rights Act of 1964. I do not know, in the first instance, that Mr. Wilcox is a lawyer so that I do not know that he is familiar with it. I do not know that he is familiar with the interpretation of it. I don't know. I do not see the thrust of the question and I think it is a buckshot question which patently Mr. Wilcox is incapable of answering intelligently. I do not see what the relevance is even as a matter of discovery.

Mr. Shine: I will withdraw the question and refer you, Mr. Wilcox, to your regulations.

Q.165. Directing your attention, then, Mr. Wilcox, to the regulations under this law, specifically "Procedures," Roman numeral II (B) (4), are you familiar with that provision sir? A. I am.

Q.166. Doesn't that require each non-public school teacher to submit to the Commissioner of Education upon forms [45] prescribed by him a statement signed by the principal that the school complies with the provisions contained in Title 6 of the Civil Rights Act of 1964?

(Whereupon pending question was read by the reporter)

Mr. Allen: I object. First of all, I object because you mis-stated the regulations. Secondly, I find no relevance between this question and the Bill of Complaint.

(Off the record colloquy)

Q.167. Are you familiar with Regulation II (B) (4), sir? A. I am.

Q.168. Does the department have any forms for that purpose? A. There is on file—

Mr. Allen: I object to this whole line of testimony. I do not want to interrupt the deposition unduly by repeating these objections, but for all of the reasons stated I object to this entire line of questioning. Is that understood, Mr. Shine?

Mr. Shine: You have stated it and I assume it is on the record, Mr. Allen.

Q.169. Are there any such forms, sir? A. There is on file at the Department of Education a [46] statement saying that each of the schools complies with the Civil Rights Act of 1964, Title 6.

Q.170. Is that for all schools or is that for all non-public schools? A. If I had received an application from teachers in a school in which I believed there might not be such a form on file, I would check with the Equal Educational Opportunities Division of the Department of Education to ascertain that such a statement was on file. I do not maintain such a file myself.

Q.171. When the materials came in under the regulations and your procedures under this statute, as a matter of routine or as a matter of ministerial work, sir, was there a check made for each school to determine whether such compliance has been carried out? A. There was.

Q.172. And is it your testimony that, in fact, there was compliance by all such schools? A. There is a statement on file of such compliance.

Q.173. Was there correspondence sent by your department to the non-public schools subsequent to September 15, 1969? A. Not by me that I can recall.

Q.174. Was there anything sent out in January of 1970? [47] A. A communication was sent on January 9, 1970, addressed to the principals of non-public schools, from me. This was a communication which we requested the non-public schools to submit to this office or to my office

under Regulation B-2 a list of teachers who have applied for a salary supplement.

Q.175. And that letter was dated January 9? A. January 9, 1970. That was sent out to all principals, all non-public schools.

Q.176. Were there enclosures with it, sir? A. Yes.

Q.177. Do you happen to have any copies of enclosures? A. It is a copy of the form that you—

Mr. Shine: That is called Exhibit 3?

The Witness: One of the forms.

Q.178. Is that the request for current expenditures? A. No, it is Form Number—

Q.179. Thirty-two NPS? A. Thirty-two NPS.

Q.180. I would ask that the January 9th letter be introduced.

(Whereupon letter dated January 9, 1970, from Mr. Wilcox to principals of non-public schools, was marked as Plaintiffs' Exhibit No. 10)

[48] Mr. Shine: Mr. Wilcox, I have no further questions at this time, but in accordance with the previous request I made to determine whether there were any non-Catholic Parochial Schools or teachers in such schools who have been declared eligible by you, sir, when we have concluded here would you be kind enough to determine that and we would like to get it on the record.

The Witness: All right. It will take me, as I said before, a half to three-quarters of an hour to do it.

Mr. Shine: That is all I have at this time.

Mr. Collins: We have no questions.

Mr. Allen: I have no questions at this time.

(Whereupon the deponent concluded his testimony in the morning session and returned at approximately 2:30 p.m. in the afternoon session)

Edward F. Wilcox, Resumed

Examination By Mr. Shine

Q.181. Mr. Wilcox, have you now had an opportunity to examine your files to determine whether or not there

are any [49] teachers who have been approved by the Department of Education for the salary supplements who are not teachers in the Catholic Parochial Schools? A. There are none.

Q.182. And do you have the number of teachers who have been approved? A. One hundred sixty-one.

Q.183. In the list of payees that is an exhibit here, there are annexed to each approved teacher's name a code number, referring, I believe, to that teacher's school; is that correct? A. That was an administrative convenience. It was not required, but we thought we might be asked at sometime in the future, since this is a public record, about a particular teacher's status. For that reason we identified it by a school code number.

Q.184. And do you have a book or manual which provides the information as to what schools are represented by those code numbers? A. We used our Census Enumerators' Handbook, 1969, published by the Rhode Island State Department of Education, Division of Research and Planning.

Q.185. Is that the handbook that you have just handed to me? [50] A. It is.

Mr. Shine: I would ask that this be marked as an exhibit.

(Whereupon Census Enumerators' Handbook, 1969, was marked as Plaintiffs' Exhibit No. 11)

Mr. Allen: Well, at this time I would pro forma object to it being marked as a full exhibit inasmuch as I have not had the time or I am not familiar with the book and I would like to have an opportunity to determine with precision what is in it and what is involved and whether there is any material in it which is irrelevant and prejudicial. Therefore, I would object at this time until I have had an opportunity to study it. Maybe by then I will be perfectly willing to have it marked as a full exhibit.

Mr. Shine: All right. I have nothing further.

Mr. Collins: I have nothing at this time.

Mr. Allen: Nothing.

Plaintiffs' Exhibit No. 2

[Deposition of Appellant John R. Earley]

* * *

[1] JOHN R. EARLEY, first having been duly sworn, testified as follows:

Examination by Mr. Shine

Q.1. What is your full name, sir? A. John R. Earley.

Q.2. Where do you live, sir? A. 5 Cumberland Road, Riverside, Rhode Island.

Q.3. And what is your occupation? A. Educator.

Q.4. Where are you presently engaged? A. Saint Francis Xavier School, East Providence.

Q.5. Is that a Roman Catholic parochial elementary school? A. Yes.

Q.6. In what capacity are you engaged? A. Principal and teacher.

Q.7. What do you teach? A. Science, mathematics, social studies.

Q.8. How long have you been at that school, sir? A. This is my first year, sir.

Q.9. Have you taught previously? A. Yes, sir.

Q.10. Where have you taught? A. Saint Cecilia's School in Pawtucket; Saint Mary's [2] Academy, Bay View, East Providence; Holy Name School in Providence, and for the State of Rhode Island at the Rhode Island Boys Training School.

Q.11. Other than the training school position, it was Roman Catholic parochial schools; is that correct? A. Yes, sir.

Q.12. Now, are you one of the intervenors, so-called, who have entered this suit? A. Yes, sir.

Q.13. Are you familiar with the Salary Supplement Aid Bill? A. Yes, sir.

Q.14. You have applied for Supplemental Aid under that bill; is that correct? A. Yes, sir.

Q.15. And your application has been approved as far as you know? A. Yes, sir.

Mr. Collins: I might say from his standpoint he assumes that, but we know from this morning that it was. That might at least be nice news for him.

Q.16. Now, what was the first contact that you had with the Department of Education after the Salary Supplement [3] Bill was passed? A. It would have been the letter I had from Mr. Wilcox after the bill was passed. I think there was—after the bill was passed, I believe there was a meeting here in this building downstairs, although I am not clear whether that was before or after, although I think it was after. If not, it would have been the letter from Mr. Wilcox asking for the teachers in the school who were applicable for the subsidy.

Q.17. You refer to a meeting. What sort of a meeting was that, sir? A. There was a hearing here downstairs as to how, I believe, the bill was going to work. I think this was after passing. It was downstairs on the lower floor.

Q.18. Was that a meeting that the commissioner had? A. Yes, sir.

Q.19. Was it a public meeting? A. Yes, sir.

Q.20. What was discussed there, do you remember? A. I believe it was just as to how the bill—how it was to be paid, how it was to be worked out.

Q.21. And who spoke at that meeting? [4] A. Father Mullen, I believe, was questioned. There were some members in opposition to it who spoke, and Dr. Robinson and I believe Mr. Wilcox was there, too.

Q.22. Do you remember approximately how many people in all were at that meeting? A. Oh, maybe about 20, 25.

Q.23. Subsequent to that you received communication, did you say, I think, from— A. After the bill was passed. The only communication would have been the letter from Mr. Wilcox asking for the teachers who were applicable for the salary subsidy from any school.

Q.24. He sent you some forms? A. Right.

Q.25. What did you do with those materials, sir? A. Filled them out as requested and returned them to him.

Q.26. You filled out forms asking for financial information, for example, do you recall that? A. No, it had asked for the teacher's name, their social security number, their certification number, their address, and if they complied. I believe, well, actually, that was what it was—teachers who did comply with all the rules and regulations.

[5] Q.27. Did you circulate these for teachers to sign, these applications? A. No. The form that I received, if I remember correctly, simply wanted their name, address, social security number.

Q.28. Do you recall getting actual applications for different teachers to fill out? A. Yes.

Q.29. Did you distribute those to the teachers? A. They had to sign them, yes.

Q.30. And what did they do with them, give them back to you? A. They sent them right in.

Q.31. To you? A. Yes. We all sent them back together.

Q.32. You submitted the material for the teachers at the same time you submitted the information that was requested from the school; is that right? A. Yes, sir, I believe so.

Q.33. Who employs you specifically? A. Saint Francis Xavier Parish.

Q.34. Who actually engages you, for example, who did you interview with, for example? A. Well, at the time I interviewed with a Dr. Pat Faunce, [6] who was a professor of education at the University of Rhode Island, and was interviewing the prospective teachers and principal for the pastor.

Q.35. Is that gentleman a member of that parish? A. It is a woman.

Q.36. A woman? A. Not presently because she was teaching at U.R.I. She had been previously.

Q.37. And you say she was interviewing for the position for the pastor; is that correct? A. That's correct.

Q.38. And did she actually hire you or did she just make a recommendation? A. The pastor did.

Q.39. Subsequently the pastor engaged you; is that right? A. Yes, sir.

Q.40. Are you employed under a written contract or is it just an oral arrangement? A. It is a written contract.

Q.41. And for a term of years? A. For one year.

Q.42. You don't have a copy of your contract with you. do you? [7] A. No, sir.

Q.43. Do you have a copy of the contract? A. Yes, sir.

Q.44. And under that contract who is the employer? A. Well, it is signed by the pastor.

Q.45. So the church, through the pastor, actually employs you; is that your understanding of it? A. Yes, sir.

Q.46. How are faculty members, other than the principal, engaged in your school? A. They were engaged in much the same way as I was.

Q.47. This lady interviewed them, then made recommendations to the pastor; is that correct? A. Yes, sir.

Q.48. And do your other teachers at the school, other than yourself, also have written contracts as far as you know? A. Yes, sir.

Q.49. Are they one-year arrangements? A. I would say so, yes, sir.

Q.50. And all with the same employer as you have? A. I would say so.

Q.51. Who is the pastor at your school or who was at that time? [8] A. Reverend Manuel Rego.

Q.52. Do you have full responsibility and authority to run the school? A. Yes, sir.

Q.53. Do you make decisions as to curriculum and programming for the school? A. Yes. sir.

Q.54. Do you have any guidelines or regulations within which you must work and operate the school? A. Well, we have the guidelines insofar as the state regulations are concerned, yes, sir.

Q.55. And how about the Diocese, does the Diocese provide you with guidelines? A. The Diocese puts out a handbook of regulations which are a general guideline, yes.

Q.56. How about the parish, does the parish have any regulations of any sort? A. No, sir.

Q.57. Do you communicate from time to time with your pastor or other representatives of the church with regard to the operation of the school? A. No, sir.

Q.58. Is there a Board of Trustees or Board of Directors for [9] the church, if you know? A. I don't know. I believe there would be trustees for the church, but there is no relationship between them and the school so I really don't know.

Q.59. Do you have occasion to communicate from time to time with any representatives of the parish regarding operations of the school? A. Only insofar as a parish school board of parents of the children, but they are not representatives of the parish. They are representatives of the children.

Q.60. These are parents who generally are members of the parish who have students who go to the school? A. Yes. sir.

Q.61. Does the school that you are principal of have a name? A. Saint Francis Xavier School, yes, sir.

Q.62. The same as the church? A. Yes, sir.

Q.63. Is it in the same vicinity as the church itself? A. Yes.

Q.64. Is it on the church grounds? A. It is right next door to the church, yes, sir.

Q.65. And is the church connected to the school building in any way? [10] A. Physically?

Mr. Shine: Yes.

The Witness: No, sir.

Q.66. Does the name of the school appear on the outside of the building? A. Yes, sir.

Q.67. Is there any designation or crucifix on the outside of the building to indicate that it is connected with the church? A. There is no crucifix, no, sir.

Q.68. Just the name on the outside? A. There is a cross.

Q.69. And inside the school building are there in various parts of the building manifestations of the fact that it is a Catholic parochial school? A. Yes.

Q.70. What nature, sir? A. Crucifixes.

Q.71. Where would these be in the school? A. There would be one in each room.

Q.72. Are there other manifestations? A. Statues.

Q.73. Throughout the building and in the rooms? [11] A. Yes, sir.

Q.74. Anything else? A. No, sir.

Q.75. You say "statues," you mean religious statues? A. Yes, sir.

Q.76. Of Catholic saints? A. Yes.

Q.77. Is there anything else you can think of, any pictures or regilious figures? A. Well, in the lobby we have a picture of the Pope and one of the Bishop.

Q.78. Anything else you can think of? A. Of religious connotation, no.

Q.79. What grades does your school run through? A. Kindergarten through six.

Q.80. And are there any students in your school whose families are not members of the parish? A. Yes, sir.

Q.81. How many? A. I would say, offhand. at least four because they come from a distance so they would not be members of the parish.

Q.82. Are they Catholic? [12] A. Yes, sir.

Q.83. How many students in the whole school? A. We have 270.

Q.84. With the exception of those four, the other students—their families are members of the parish? A. I wouldn't say so, not necessarily, because we do have many children that come from the East Providence Region whose parents may be members of other parishes.

Q.85. Would you say most of the students are parish people? A. Yes, sir, I would, sir.

Q.86. Now, on your faculty do you have nuns teaching in the school? A. No, sir.

Q.87. How many teachers are there in the school? A. Well, including myself it would make eight.

Q.88. Are they all lay people? A. Yes. sir.

Q.89. Is there a formal religious course taught in the school? A. Yes, sir.

Q.90. Who teaches that? A. Well, I have two people on the faculty that handle the religious programs.

Q.91. Who would those be? [13] A. Their names?

Mr. Shine: Yes.

The Witness: One is Miss Marie Mello and the other is Miss Mary Aguiar.

Q.92. Have they applied for salary supplements, do you know? A. No, sir.

Q.93. Now, when is the religion course taught in the school? A. Well, there is no set time. Each class has its own particular time. There isn't religion going on in every class at one time. It goes with the teacher.

Q.94. You say these are the only teachers that teach religion. Do they move from class to class? A. Yes, sir.

Q.95. They rotate the time during the day when religion is taught? A. Yes, sir.

Q.96. How much is taught to students in terms of formal religion courses? A. Well, we teach religion three days a week for 30-minute periods. That would be an hour and one-half a week.

Q.97. Now, who determines where the classes will be taught, do you decide that? A. Where they will be taught? Yes, I do.

[14] Q.98. From what you have said before, the religion course is taught in each room with the teachers moving around? A. Yes, sir.

Q.99. How about other subjects such as math, are they taught by a teacher who moves or by a teacher who stays? A. A teacher who moves.

Q.100. And the children stay in the same room; is that correct? A. That is correct.

Q.101. And math is taught in that fashion? A. Yes, sir.

Q.102. And science is taught in that fashion? A. Yes, sir.

Q.103. Are there any foreign languages that are taught? A. Yes, sir.

Q.104. What languages? A. Portuguese.

Q.105. Is that taught in that fashion also? A. Yes, sir.

Q.106. So there is no special room that any of these courses are taught in; is that right? A. No, sir.

Q.107. Now, who controls the finances of the school of which you are principal, sir? [15] A. The pastor.

Q.108. Is it determined through him how much is available to be spent for the school during the year? A. Well, very generally speaking, I would have to say yes, although if I need books or materials I don't have to ask him for these.

Q.109. You have funds, some general funds, that you would have some flexibility to order yourself; is that it? A. No.

Q.110. Where do you get the funds? A. Well, I just turn over any bills to him.

Q.111. What sort of expenditures does the parish carry in terms of the operations of the school, what are the categories, do they pay salaries; is that correct? A. Salaries.

Q.112. What other expenditures? A. The mortgage on the building, heat, light, oil. maintenance, supplies.

Q.113. Is it fair to say the parish pays all the expenses of operating the school? A. Oh, yes.

Q.114. Now, how many teachers in your school have applied for Supplement Aid, do you know, sir? [16] A. Yes, there would be five.

Q.115. Now, all of these teachers have previously executed employment contracts with respect to the current year; is that correct? A. Yes, sir.

Q.116. And is there provision made for a set salary for those teachers? A. Yes, sir.

Q.117. And how, administratively, is the matter of the expected supplemental payments handled or expected to be handled? A. How does the supplement come into the—

Mr. Shine: Yes.

The Witness: Well, we have contracted for a gross salary, 15 per cent of which is expected to come from the State Salary Supplement whenever the State pays the supplement.

Q.118. How do you pay the teachers, on a weekly basis or monthly basis? A. No, they are paid every two weeks.

Q.119. Now, your salary, for example, what is your salary? A. My salary is $8,000.

Q.120. Now, your contract is for that amount; is that correct? [17] A. That's correct.

Q.121. And you get salary payments every two weeks, correct? A. Yes, sir.

Q.122. And those payments every two weeks, are those based on a salary of $8,000? A. Minus the 15 per cent.

Q.123. So that the parish has committed itself to pay the $8,000 to you? A. Yes, sir.

Q.124. Although you do not necessarily expect it all to come from the parish; is that right? A. No, sir.

Q125. Now, you are paid year round or just during the school year? A. I am paid year round.

Q.126. So 12 months, you have payments every two weeks? A. Yes, sir.

Q.127. And if the salary supplement payments were to come in, what would be your procedure for handling that? A. Well, I believe the State would send me directly the check.

Q.128. Now, in connection with the material that was supplied to the Department of Education, are you aware that [18] certain financial information as to expenditures was required to have been submitted? A. Yes, sir.

Q.129. Did you prepare that information or was that prepared elsewhere A. That was prepared elsewhere.

Q.130. Who prepared that for your school? A. Probably the secretary to the parish.

Q.131. Now, do you keep books and records relative to the school's operation? A. On finances?

Mr. Shine: Yes.

The Witness: No, sir.

Q.132. Do you have any means to know the annual per pupil expenditure that your school lays out for secular education of its students? A. No, sir.

Q.133. Do you know if that is possible to be determined by the information that the parish has? A. I am quite sure it would be.

Q.134. Do you know if it has been determined? A. I would presume so, yes, sir.

Q.135. Why do you say that, sir? [19] A. Well, I believe that is one of the pre-requisites of the Salary Subsidy Bill.

Q.136. You have never seen that information provided? A. It was not given to me, no, sir.

Q.137. Now, Mr. Earley, were you active in the community in the State in connection with the legislative session last spring when this Salary Supplement Bill was passed? A. Yes, sir.

Q.138. In any formal capacity or just as a citizen? A. In a formal capacity.

Q.139. What capacity was that, sir? A. As President of the Association of Catholic Educators.

Q.140. How long have you been in that organization, sir? A. Well, it would be four years next October.

Q.141. Did you say you were President last spring? A. Yes, sir.

Q.142. Are you presently President? A. Yes, sir.

Q.143. How long have you had that position, sir? A. Since it was founded.

Q.144. How many people in that organization, approximately? A. Dues paying?

Mr. Shine: All right, dues paying.

[20] The Witness: I would guess around 200.

Q.145. Now, what are the requirements for membership in this organization, sir? A. Simply to be a teacher in the Parochial School System.

Q.146. Catholic Parochial School? A. Yes, sir.

Q.147. You say there are about 200 dues paying members? A. About that.

Q.148. Are there other members who are not dues paying members? A. Yes. Again, generally speaking, any teacher—the work we do benefits any teacher in the system and they are free to take part in any of our programs.

Q.149. Did you last spring while this bill was pending take a position publicly for your organization in connection with this bill? A. Yes, sir.

Q.150. What was that position? A. That it should be passed.

Q.151. Why did you feel it should be passed? A. Because I feel that our teachers, the teachers of secular subjects. are doing the same service to the State of Rhode Island and its citizens as are the public school teachers.

[21] Q.152. Were the Catholic Parochial Schools having financial difficulties meeting the salaries of lay teachers as of last spring? A. They are having financial difficulties which entails that, yes, sir.

Q.153. And would payment of these salary supplements alleviate that problem? A. No, sir.

Q.154. It would not? A. It would help. It would not alleviate it.

Q.155. It would help? A. It would help.

Q.156. In what way would it help? A. Simply that those schools that could not raise the money to hire secular teachers and to keep secular teachers, these teachers would be able to stay if they received an adequate salary.

Q.157. Now, did you ever give statements to the press in connection with your position for this organization last spring? A. Yes, sir.

Q.158. You reiterated that position, you felt this bill should be passed? [22] A. Yes, sir.

Q.159. And did you make this position known directly to members of the General Assembly? A. In a body?

Mr. Shine: No, members.

The Witness: Yes, sir.

Q.160. Who, for example? A. Bob McKenna.

Q.161. Who is Bob McKenna? A. He is a representative from Newport.

Q.162. What is his profession aside from being a legislator? A. He is a teacher.

Q.163. Where does he teach? A. I believe he is at Salve Regina in Newport.

Q.164. That is the Catholic college in Newport? A. Yes, it is.

Q.165. Has he been active in the organization of which you are President? A. No, sir.

Q.166. Has he been active in other similar organizations, other organizations supporting—which supported a financial assistance to or for the parochial schools? A. I believe so.

[23] Q.167. What organization? A. C.E.F.

Q.168. What is that group? A. Citizens for Educational Freedom.

Q.169. He was an officer of that organization, wasn't he, during the last two years? A. That I don't know.

Q.170. Now, what occasions did you speak with Mr. McKenna about this bill? A. Oh, on several occasions. C.E.F. indicated they would support us in our efforts.

Q.171. Do you know that Mr. McKenna introduced this bill, the Salary Supplement Bill? A. No, I do not believe he did.

Q.172. Who introduced it, do you know? A. I believe Mr. Skiffington introduced it.

Q.173. Wasn't Mr. McKenna one of the people who introduced it with Mr. Skiffington? A. Oh, yes.

Q.174. Did you work on behalf of this bill in more ways than speaking to Mr. McKenna on the several occasions you have referred to? A. I urged teachers to support it, yes, sir.

[24] Q.175. What teachers? A. Our teachers.

Q.176. Parochial school? A. Parochial, yes.

Q.177. Did you do anything else, sir, in this regard? A. I testified at the public hearing that they had here in the state house.

Q.178. That was the General Assembly Committee that was considering the bill? A. Yes, sir.

Q.179. Do you know if organizations of teachers other than the Catholic Parochial School Teachers urged the General Assembly to enact this bill? A. No, I do not know that, sir.

Q.180. Do you know if there were any others? A. That supported it?

Mr. Shine: Yes.

The Witness: No, sir.

Q.181. Do you know if there were any organizations or independent non-public schools that urged the General Assembly to pass this bill? A. No, sir.

Q.182. In addition to the religion course that is taught, I [25] believe you said three days a week— A. Yes, sir.

Q.183. Are there formal religious exercises in the school? A. No, sir.

Q.184. Any prayers? A. In the morning, yes, sir.

Q.185. All students participate? A. Yes, sir, they do.

Q.186. Are these Catholic prayers? A. Yes, sir.

Mr. Shine: I have no further questions.

Mr. Collins: No questions.

Mr. Allen: Thank you.

Plaintiffs' Exhibit No. 3

[Regulations of the Commissioner of Education Governing Payment of Salary Supplements to Non-Public School Teachers]

I. Definitions:

A. *Non-Public School*

A non-public school as defined in Section 16-49-2 of the General Laws shall mean any school not operated for profit, other than a public school, within this state wherein a resident of this state may legally fulfill the compulsory school attendance requirements of the law, except such schools whose annual per student expenditure for secular education equals or exceeds the average annual per student expenditure in the public schools in the state at the same grade level in the second proceding fiscal year for school operations as determined by the Commissioner of Education.

B. *Non-Public School Teacher*

A non-public school teacher as defined in Section 16-49-2 of the General Laws is one who teaches in a non-public school exclusively only those subjects required to be taught by state law, to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, or any other subjects that are taught in public schools.

C. Eligible Teacher

An eligible teacher is one who meets the following qualifications as prescribed by Section 16-49-3 of the General Laws:

(a) Holds an appropriate valid teaching certificate issued by the Department of Education, (b)

teaches in a non-public school as defined in Section 16-49-2 of the General Laws and in these regulations, (c) teaches in any grade from 1-8 exclusively only those subjects required to be taught by state law to the same extent as those subjects are taught in the public schools, or which are provided in public schools throughout the state, or any other subjects that are taught in public schools, (d) receives a salary which meets the minimum salary standards stated in Section 16-7-29 of the General Laws, (e) uses only teaching materials which are used in the public schools of the state, (f) does not teach a course in religion, (g) submits a signed statement in which he or she has promised not to teach a course in religion for so long as he or she receives a salary supplement.

D. *Current Salary*

Current Salary as said term is used in Section 16-49-4 of the General Laws is the amount of remuneration including the salary supplement due a teacher for the term of employment for which the teacher is applying for a salary supplement.

E. *Salary Supplement*

Salary Supplement as said term is used in Section 16-49-4 of the General Laws is fifteen percent (15%) of Current Salary as said term is defined in D. above.

F. *Average Maximum Salary*

Average Maximum Salary is the average of the maximum salaries paid to the public school teachers in Rhode Island as determined by the Commissioner of Education.

II. PROCEDURES

A. *Teachers*

1. An eligible teacher desiring to apply for a salary supplement shall apply annually in the month of September upon forms prescribed by the Commissioner of Education. A teacher beginning employment after the start of the school year shall make application for a salary supplement within 30 days after the beginning date of employment.

2. The salary supplement shall be paid directly to the teacher semi-annually in the months of February and June upon receipt by the Commissioner of Education of evidence that the teacher is eligible to receive such supplement.

3. The salary supplement shall be paid to the teacher only for the term of employment during which the teacher meets the requirements of eligibility.

B. *Non-Public Schools*

1. Each non-public school principal shall submit to the Commissioner of Education annually on or before August 1st of each year, upon forms prescribed by the Commissioner, a certified report of the non-public school receipts and expenditures for the preceding fiscal year July 1-June 30th. Such reports shall be subject to audit by the State Department of Education.

2. Each non-public school principal shall submit on October 1, January 15 and June 15, upon forms prescribed by the Commissioner of Education, a list of teachers in his school who have applied for a salary supplement, and such other information as may be needed by the Commissioner to enable him to carry out his responsibilities under the law.

3. Each non-public school principal shall furnish annually at the close of school in June, to the Commissioner of Education upon forms prescribed by him, the average daily membership of the school for the preceding school year.

4. Each non-public school principal shall submit to the Commissioner of Education upon forms prescribed by him a statement signed by the principal that the school complies with the provisions contained in Title 6 of the Civil Rights Act of 1964.

C. *Department of Education*

1. The Department of Education, upon receipt of an application for a salary supplement, shall determine the applicant's eligibility by verifying whether or not the applicant complies with these regulations and receives a salary in accordance with the provisions of Section 16-49-4 of the General Laws.

2. The Department of Education, upon determination of eligibility of a teacher to receive a salary supplement, shall certify to the state controller on properly authenticated vouchers for payment, a list of eligible teachers and the amount of salary supplement each is entitled to receive.

Note: The August 1st date in B (1) will be waived for the school year 1969-70.

Plaintiffs' Exhibit No. 4

[Letter Sent to Nonpublic School Principals on September 15, 1969]

State of Rhode Island and Providence Plantations
Department of Education
Hayes Street, Providence, R. I. 02908

September 15, 1969

To: Principals of Non-Public Schools

From: William P. Robinson, Jr.,
Commissioner of Education

Regulations have been adopted governing the payment by the State of Rhode Island of Salary Supplements to Non-Public School Teachers under Chapter 16-49 of the General Laws. This statute was enacted by the 1969 General Assembly.

A copy of these regulations is enclosed. They describe who is eligible to receive a salary supplement and the procedures to be followed by the applicant teacher and the principal of each school which employs teachers eligible to receive the salary supplement.

Enclosed also are copies of the teacher application forms and forms for you to complete which will provide the Department of Education with the necessary information about your school and your teachers.

If you believe your teachers are eligible to receive a salary supplement please ask them to complete an application and return it to you. Be certain that each teacher indicates his Rhode Island teacher certificate number. Do not submit any applications without certificate numbers. This first year the due dates for teacher applications and school forms are waived but we would like the information when it is available to begin to process the applications.

Please return all the applications and the school forms in the enclosed envelope. If you have any question regarding the forms or the regulations please contact:

Mr. Edward F. Wilcox
Associate Commissioner of Education
Division of Research & Planning
Roger Williams Building, Hayes Street
Providence, Rhode Island 02908

He may be reached by telephone at 521-7100/Extension 681.

Enclosures (3)

Plaintiffs' Exhibit No. 5

[Fiscal Note on Salary Supplement Act]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
GENERAL ASSEMBLY

FISCAL NOTE REQUEST

Form GA-1

Forward First Three Copies to Budget Officer

1. White—Fiscal Assistant
2. Pink—Budget Officer
3. Orange—Legislative Committee
4. Green—Fiscal Assistant

Request No: 58
Bill No.: H-765
Date of Request: April 3, 1969
Due Date: April 11, 1969

Subject/Title: Non public school teachers

FISCAL EXPLANATION:

Parochial Schools:—There are 342 elementary lay teachers and 129 secondary lay teachers in the parochial schools.

Assuming the average annual salary for these teachers is $5,000 on the elementary level and $7,000 on the secondary

level the cost of the salary supplement for these teachers would be $783,900.

Independent Schools:—There are 176 elementary teachers and 141 secondary teachers.

Assuming the average annual salary for these teachers is $6,000 on the elementary level and $8,000 on the secondary level it is estimated the cost for these teachers would be $648,000.

Total Estimated Cost:—

Parochial Schools	783,900
Independent Schools	648,000
	$1,431,900

Bill states that the salary supplement shall be that percentage of the non-public school teachers current salary which equals the minimum level of support which the state provided to any city or town of the state under Title 16, Chapter 7. This is interpreted to be 30%.

Prepared by (Agency): Department of Education

Date: April 9, 1969

Plaintiffs' Exhibit No. 6

[Salary Supplement Act, as Introduced in General Assembly]

H 1765

State of Rhode Island and Providence Plantations

January Session, A. D. 1969

AN ACT Providing for Salary Supplements to Non-public Schoolteachers and in Amendment of and in Addition to Title 16 of the General Laws Entitled "Education," as Amended.

It is enacted by the General Assembly as follows:

Section 1. Title 16 of the general laws entitled "Education," as amended, is hereby further amended by adding thereto the following chapter:

"CHAPTER 49

"Salary Supplements to Nonpublic Schoolteachers

"16-49-1. Legislative findings—Declaration of policy.—The general assembly being charged by the constitution of this state with the duty not only of promoting public schools but also adopting 'all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education' makes the following findings: The public laws of 1960, chapter 27, declares: "It is the policy of the state of Rhode Island to provide a quality educatilon for all Rhode Island youth." This statute implements that policy by providing that the state shall assist the cities and towns by paying part of the operating revenues for the public schools.

But there are in Rhode Island approximately 45,000 children attending nonpublic elementary schools. They constitute about 25% of the total school population at these age levels.

Because nonpublic schools enroll such a significant portion of the total school population of the state, the state's policy of providing a quality education for all Rhode Island youth would be seriously impaired if the quality of education provided in said schools were to deteriorate.

Nonpublic schools are finding it increasingly difficult to maintain their traditional quality, due to rising costs. This is particularly serious with regard to the salaries of teachers; without adequate salary scales, no school can attract sufficient number of competent, dedicated teachers; and teachers are the prime factor in educational quality. These facts were recognized for the public schools in 1960, and dealt with by the passage of chapter 27 of the public laws of that year.

It is, therefore, the policy of the state of Rhode Island to provide a quality education for all Rhode Island youth, those in public and nonpublic schools alike; within the limitations imposed by the constitutions of the United States and of Rhode Island. In pursuance of said policy, in order to assist nonpublic schools to provide salary scales which will enable them to retain and obtain teaching personnel who meet recognized standards of quality, we hereby enact the following:

"16-49-2. Definitions.—As used in this chapter unless the context clearly indicates otherwise:

1. 'Nonpublic school' shall mean any school not operated for profit, other than a public school, within this state wherein a resident of this state may legally fulfill the compulsory school attendance requirements of the law.

2. 'Nonpublic schoolteacher' shall mean a teacher who teaches exclusively only those subjects required to be taught

by state law, to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, and any other subjects that are taught in public schools.

"16-49-3. Eligibility for salary supplement.—Every nonpublic schoolteacher shall, upon his or her request, be paid by the state through the department of education, a salary supplement in the amount fixed by law in such installments and at such intervals as shall be fixed by regulation promulgated by the commissioner of education. As a condition for the payment of such salary supplement the department of education shall be satisfied that the teacher:

1. Is one who teaches exclusively only those subjects required to be taught by state law to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, and any other subjects that are taught in public schools.

2. Has a teaching certificate issued by or under the authority of the state board of education in substantially the same manner that such certificates are issued to teachers in public schools.

3. Is receiving a salary which, including the salary supplement, meets the minimum salary standards for public schools required for eligibility under title 16, chapter 7 of the general laws of Rhode Island.

4. Is using only teaching materials approved for use by the public schools of the state.

"16-49-4. Amount of supplement—How determined.—The amount of salary supplement to be paid to an eligible nonpublic schoolteacher shall be that percentage of his or her current salary up to a maximum of $8,000.00 which equals the minimum level of support which the state provided in the preceding fiscal year to any city or town or school district of the state under the provisions of title 16, chapter 7 of the general laws, entitled "Foundation level school support".

"16-49-5. Regulation by department of education.—It shall be the duty of the department of education to promulgate regulations for the purpose of carrying out the provisions of this chapter. Such regulations shall include rules and procedures for making payments of salary supplements to eligible teachers; said regulations, however, must provide that said payments be made by the state directly to the teacher and not through the agency of the nonpublic school in which the teacher is employed. Such regulations shall also insure that the teacher is receiving the minimum salary provided for in section three of this chapter, and to that end the financial records of the nonpublic school pertaining thereto shall be subject to auditing by the state department of education.

"16-49-6. Annual appropriations—Disbursements.—The general assembly shall annually appropriate such sums as it may deem necessary for the purpose of carrying out the provisions of this chapter; and the state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payment of such sums, or so much thereof, as may from time to time be required within the amount appropriated, upon receipt by him of proper vouchers approved by the department of education."

Sec. 2. This act shall take effect on July 1, 1969.

H 1765

Explanation

By the Legislative Council

This bill provides for the payment of salary supplements to nonpublic schoolteachers who exclusively teach subjects which are required by state law to be taught and a nonpublic school is defined as one which is not operated for profit.

Only a teacher who exclusively teaches a subject required by the state, who has a teaching certificate issued under the authority of the state board of education, and who is re-

ceiving a salary which, including the supplement, meets the minimum standards for public schools, would be eligible to receive the supplement.

The act also provides for the method of determining the amount of the supplement regulation by the department of education and an unspecified annual appropriation.

The act would take effect on July 1, 1969.

Plaintiffs' Exhibit No. 7

[Salary Supplement Act, as Approved by General Assembly]

R. I. PUBLIC LAWS (1969)

CHAPTER 246.

AN ACT Providing for Salary Supplements to Non-public Schoolteachers and in Amendment of and in Addition to Title 16 of the General Laws Entitled "Education," as Amended.

It is enacted by the General Assembly as follows:

Section 1. Title 16 of the general laws entitled "Education," as amended, is hereby further amended by adding thereto the following chapter:

"CHAPTER 51

"Salary Supplements to Nonpublic Schoolteachers

"16-51-1. Legislative findings—Declaration of policy.—The general assembly being charged by the constitution of this state with the duty not only of promoting public schools but also adopting 'all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education' makes the following findings: The public laws of 1960, chapter 27, declares: "It is the policy of the state of Rhode Island to provide a quality education for all Rhode Island youth." This statute implements that policy by

providing that the state shall assist the cities and towns by paying part of the operating revenues for the public schools.

But there are in Rhode Island approximately 45,000 children attending nonpublic elementary schools. They constitute about 25% of the total school population at these age levels.

Because nonpublic schools enroll such a significant portion of the total school population of the state, the state's policy of providing a quality education for all Rhode Island youth would be seriously impaired if the quality of education provided in said schools were to deteriorate.

Nonpublic schools are finding it increasingly difficult to maintain their traditional quality, due to rising costs. This is particularly serious with regard to the salaries of teachers; without adequate salary scales, no school can attract sufficient numbers of competent, dedicated teachers; and teachers are the prime factor in educational quality. These facts were recognized for the public schools in 1960, and dealt with by the passage of chapter 27 of the public laws of that year.

It is, therefore, the policy of the state of Rhode Island to provide a quality education for all Rhode Island youth, those in public and nonpublic schools alike; within the limitations imposed by the constitutions of the United States and of Rhode Island. In pursuance of said policy, in order to assist nonpublic schools to provide salary scales which will enable them to retain and obtain teaching personnel who meet recognized standards of quality, we hereby enact the following:

"16-51-2. Definitions.—As used in this chapter unless the context clearly indicates otherwise:

1. 'Nonpublic school' shall mean any school not operated for profit, other than a public school, within this

state wherein a resident of this state may legally fulfill the compulsory school attendance requirements of the law, except such schools whose annual per student expenditure for secular education equals or exceeds the average annual per student expenditure in the public schools in the state at the same grade level in the second preceding fiscal year for school operations as determined by the commissioner of education.

2. 'Nonpublic school teacher' shall mean a teacher who teaches in a nonpublic school exclusively only those subjects required to be taught by state law, to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, or any other subjects that are taught in public schools.

"16-51-3. Eligibility for salary supplement.—Every nonpublic school teacher shall, upon his or her request, be paid by the state through the commissioner of edution, a salary supplement in the amount fixed by law in such installments and at such intervals as shall be fixed by regulation promulgated by the commissioner of education. As a condition for the payment of such salary supplement the commissioner of education shall be satisfied that the teacher:

1. Is one who teaches in any grade from grade one through grade eight exclusively only those subjects required to be taught by state law to the same extent as those subjects are taught in public schools, or which are provided in public schools throughout the state, or any other subjects that are taught in public schools.

2. Has a teaching certificate issued by or under the authority of the state board of education in substantially the same manner that such certificates are issued to teachers in public schools.

3. Is receiving a salary which, including the salary supplement, meets the minimum salary standards for

public schools required for eligibility under title 16, chapter 7 of the general laws of Rhode Island.

4. Is using only teaching materials which are used in the public schools of the state.

5. Is one who does not teach a course in religion and who signs a statement in which he or she promises not to teach a course in religion for so long as or during such time as he or she receives any salary supplements provided for under the provisions of this chapter.

"16-51-4. Amount of supplement—How determined. —The amount of salary supplement to be paid to an eligible nonpublic schoolteacher shall be fifteen per cent (15%) of his or her current salary, which salary, including the salary supplement, is not in excess of the average maximum salary paid to public schoolteachers in this state as determined by the commissioner of education.

"16-15-5. Regulation by commissioner of education. —It shall be the duty of the commissioner of education to promulgate regulations for the purpose of carrying out the provisions of this chapter. Such regulations shall include rules and procedures for making payments of salary supplements to eligible teachers; said regulations however must provide that said payments be made by the state directly to the teacher and not through the agency of the nonpublic school in which the teacher is employed. Such regulations shall also insure that the teacher is receiving the minimum salary provided for in section 3 of this chapter, and to that end the financial records of the nonpublic school pertaining thereto shall be subject to auditing by the state department of education. Such regulations shall also insure that any nonpublic school, as that term is defined earlier in this chapter, which employs teachers who receive salary supplements as provided for in

this chapter shall comply with the provisions contained in title VI of the civil rights act of 1964.

"16-51-6. Commission to study aid to nonpublic schools.—There is hereby created a commission to consist of nine (9) members to be appointed by the governor, one of whom shall be designated by the governor as chairman. The commission is to study and evaluate state aid to nonpublic schools and is to report its findings and recommendations to the governor before January 1, 1970.

"16-51-7. Annual appropriations—Disbursements.—There is hereby appropriated out of any funds in the general treasury not otherwise appropriated the sum of three hundred seventy-five thousand dollars ($375,000.00), for the purpose of carrying out the provisions of this chapter; and the state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payments of such sums, or so much thereof, as may from time to time be required within the amount appropriated, upon receipt by him of proper vouchers approved by the department of education.

"16-51-8. Severability.—If any clause, sentence, paragraph, or part of this chapter or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or void, such judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons or circumstances.

"16-51-9. Liberal construction of act required.—This act shall be construed liberally in aid of its declared purposes."

Sec. 2. This act shall take effect on July 1, 1969.

Plaintiffs' Exhibit No. 11

[Application of Appellant John R. Earley]

Form 41 NPS
9/8/69

STATE OF RHODE ISLAND
DEPARTMENT OF EDUCATION

NON-PUBLIC SCHOOL TEACHER APPLICATION FOR A SALARY SUPPLEMENT GENERAL LAWS CHAPTER 16-49

Date 9/24/69

Certificate No. 34160 Social Sec. No. 039-22-4273

Name John Richard Earley

Address 5 Cumberland Road Riverside R.I. 02915
No. Street City State Zip Code

School St. Francis School

School Address 160 Orchard St., E. Providence

Subjects you teach Math, Science, Soc. Studies
Grade 4-5-6

Current Salary Including Salary Supplement $8000.00

Do you teach full time: YES × No

If not what percentage of the school week do you teach?

.....

Years of teaching experience 6

	Dates
School St. Cecilia's School Address Pawtucket	From 1965 To 1969
School Bay View Academy Address Ea. Prov.	From 1964 To 1965
School Holy Name Address Providence	From 1963 To 1964

Official Title of Agency by whom you are employed
St. Francis Xavier School

Statement of Eligibility

I hereby declare that I do not teach a course in religion and I promise not to teach a course in religion for so long as I receive a salary supplement from the State of Rhode Island and I further declare that I will use only teaching materials which are used in the public schools of the state.

Signature /s/ John R. Earley
Applicant

Date: Sept. 24, 1969

Approved: /s/ John R. Earley (Signature)
Principal

Date: Sept. 24, 1969

Plaintiffs' Exhibit No. 12

[Report of Expenditures and Membership By St. Francis Xavier School, East Providence, Rhode Island]

Form 31 NPS
September 8, 1969

STATE OF RHODE ISLAND
DEPARTMENT OF EDUCATION

NON-PUBLIC SCHOOL REPORT OF EXPENDITURES AND MEMBERSHIP GENERAL LAWS CHAPTER 16-49

SCHOOL: St. Francis Xavier School

ADDRESS: 160 Orchard St. East Providence, R. I.

July 1, 1969 to June 30, 1969.

SUMMARY OF CURRENT EXPENDITURES

100 Administration	$.....
200 Instruction	43,178.06
600 Operation of School Plant	9,726.72
700 Maintenance of School Plant	201.95
800 Fixed Charges	29,772.00
900 Auxiliary Agencies	.....
Total current expenditures for support of schools	$82,878.73
Number of pupils in Average Daily Membership in Grades 1 - 8.	483

Costs should be reported only for Grades 1 - 8.

If classes are conducted for grades in addition to Grades 1 - 8 pro-rate costs.

This report is due annually on August 1 for the preceding fiscal year. (See Commissioner of Education's Regulations II-B1).

Signed: /s/ Manuel de Rego, Pastor

Date: October, 1969

Plaintiffs' Exhibit No. 13

[Letter to Nonpublic School Principals, dated January 9, 1970]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF EDUCATION

ROGER WILLIAMS BUILDING

Hayes Street, Providence, R. I. 02908

William P. Robinson, Jr.
Commissioner

January 9, 1970

To: Principals of the Non-Public School Addressed

FROM: Edward F. Wilcox, Associate Commissioner of Education

Last fall you received a copy of the Regulations of the Commissioner of Education covering the payment of salary supplements to non-public school teachers. Regulation B-2 states that each non-public school principal shall submit on January 15 a list of teachers in his school who have applied for a salary supplement.

Enclosed are two copies of this form. Would you kindly complete one and return it to this office as soon as possible. You may keep the other copy for your files. Please be certain that you place the teachers certification number in its proper place, and if the teacher has terminated his employment prior to the submission of the list, please indicate so under the column Period of Employment.

It is important that these forms be received on time because they will be used to complete the master list for submission to the State Controller's Office for payment of the salary supplement to the teachers whose names appear on the list.

If you have any questions, please call me at 521-7100/ Extension 681.

ENCLOSURES (2)

Plaintiffs' Exhibit No. 14

[Handbook of School Regulations.
Diocese of Providence]

HANDBOOK OF SCHOOL REGULATIONS DIOCESE OF PROVIDENCE

Office of the Superintendent

1965

Bishop's House
30 Fenner Street
Providence 3, Rhode Island

Foreword and Approval of the Handbook of School Regulations for the Diocese of Providence

The effectiveness of the education in the schools of this, and every other, diocesan system is determined in substantial part by the organization and coordination exercised at the diocesan level. Without central planning and uniform norms there would ensue overlapping efforts, uncoordinated programs, inarticulated curricula and multiple, divisive procedures. Accordingly, standardized policies and regulations respecting administration, curriculum, text books, etc. are necessary.

This handbook of regulations is the product of several years' study and revision on the part of experienced teachers, principals, and supervisors. It expresses the concensus of the instructional and administrative personnel. Apart from the benefits of order and coordination it will contribute to our schools as a system, it should provide individual principals and teachers with a host of practical suggestions.

I am pleased to approve this handbook and to direct that the regulations contained herein have the force of synodal law in the diocese. (Fourth Diocesan Synod, Statutes 1.4; 4; 351.1).

/s/ Russell J. McVinney
Bishop of Providence

September 8, 1965

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CHAPTER ONE

ADMINISTRATIVE AND TEACHING PERSONNEL

1. SCHOOLS SUBJECT TO THESE REGULATIONS

A. The schools subject to the regulations in this handbook are all parish and inter-parochial schools, both elementary and secondary.

1. A Parish school is one for which an individual parish is financially responsible.

2. An Inter-Parochial school is one for which a single parish is not responsible. It may be:

a. Diocesan—A school built by the diocese and operated from student tuition fees, but requiring diocesan resources for major alterations and repairs.

b. Private—A school whose administration and support are the responsibility of a religious com-

munity or a private corporation acting under the approval of the Ordinary of the diocese.

B. This handbook has received the approbation of the Ordinary of the Diocese of Providence and is effective immediately. Pastors, supervisors, and other school administrators should have a copy.

C. The handbook becomes the property of the school. There should be one copy in the principal's office, one in the convent, and one in each classroom. At the time of teacher transfers to other schools this handbook should not be removed.

[2] 2. The Catholic School Board

"The Diocesan School Board, with the Bishop presiding, shall supervise the education, both spiritual and secular, in the parochial schools and diocesan high schools." (*Fourth Diocesan Synod,* Stat. 351.1)

"Under the direction of the Most Reverend Bishop, the Diocesan School Board in conjunction with the Diocesan Building Commission shall review plans for the construction and equipping of schools." (*Ibid.*)

"The School Board shall have jurisdiction in all school policies, in the employment and dismissal of teachers, in fixing teachers' salaries and in the general conduct and discipline of schools." (*Ibid.*)

The Catholic School Board is the agency of the Ordinary for determining and formulating school policies. Its recommendations when approved by the Ordinary become mandatory for all schools subject to the regulations in this handbook.

The functions of the Board are similar to those of the state Board of Education and the city or town school committee.

3. The Superintendent, The Associate and Assistant Superintendents

"The Diocesan Superintendent of Schools is appointed by the Bishop to serve as Secretary and official executive of the School Board, and he is authorized to provide uniform courses of study and methods of instruction, to prepare examinations, to visit schools, and to receive notice of all changes in school personnel." (*Fourth Diocesan Synod,* Stat. 351.2)

"The instructions of the Diocesan Superintendent of Schools must be faithfully and accurately observed at all times." (*Ibid.,* 352)

A. The superintendent of schools is the agent of the Ordinary. It is his office to transmit and to implement the educational policies of the Bishop and the School Board. He should direct the progress [3] of the diocesan school system as a whole, including the organization of the school office and the administrative staff, the supervision of diocesan school personnel, the development of the curriculum and courses of study, the adoption of improved instructional aids and techniques, and assisting at the state and community level in the formulation and implementation of programs indicated in the Elementary and Secondary Education Act or other legislation.

B. The associate and assistant superintendents are appointed by the Ordinary to assist the superindent. Apart from sharing with the superintendent many of the responsibilities described above and on the following pages, they are charged with supervising the elementary and the secondary school programs, interviewing prospective lay teachers, devising testing and guidance programs, selecting textbooks, and evaluating the credentials of applicants for the Diocesan Honor Society.

C. Some of the duties of the superintendent and the associate and the assistant superintendents are as follows:

I. To consult with the Ordinary periodically, to advise him of present or future school needs, to submit to him an annual report on student enrollment, educational accomplishments and failures for the past year, specific objectives for the current year, administrative expenditures and resources and a proposed budget for the new fiscal year.

II. To prepare the agenda for the meetings of the Catholic School Board.

III. To direct and coordinate the efforts of the diocesan supervisors.

IV. To schedule bi-monthly principals' meetings.

V. To interpret and make effective state and diocesan educational directives.

VI. To determine the annual school calendar.

VII. To serve as liaison between the diocesan schools and educational, civic, and social organizations, the general public, and the news media.

[4] VIII. To ensure prompt and adequate communication between

a. the Ordinary and the schools of the diocese

b. the Catholic School Board or the School Office, and the pastors of parish schools, religious superiors, principals and teachers.

IX. To provide for the professional growth of school personnel by means of workshops, conferences, institutes, and especially inservice courses at Catholic Teachers College of Providence.

X. To issue certificates to elementary school principals and teachers of religion as required by diocesan regulations.

XI. To visit schools personally or through representatives.

XII. To assist in the solution of disciplinary and/or other problems referred to the School Office by the Ordinary, a pastor, or a principal.

4. The Pastor

"The pastor shall have full charge of the parochial school under the direction of the Diocesan Board of Education and the Diocesan Superintendent of Schools." (*Fourth Dioc. Syn.*, Stat. 353.1)

"Pastors and their assistants should regularly visit the parish school and give their assistance in promoting spiritual and intellectual discipline. In discharging this duty, special care must be exercised to avoid interference with the good order of the classes." (*Ibid.*, 355.1)

"No pastor may grant a holiday to the school children without the written permission of the Diocesan Superintendent of Schools." (*Ibid.*, 358)

"Pastors must see to it that the children of the parochial school are not frequently asked to sell tickets or solicit donations and that no child is ever discriminated against or embarrassed because of his failure to do so." (*Ibid.*, 362.3)

A. The pastor is ex-officio the chief administrative officer of a parish school. The immediate direction of the school and its instructional program is, however, usually delegated to the sister principal. Satisfactory and effective administration depends on the coopera-

tion and mutual support of both pastor and principal in matters of local educational policy. [5]

B. In addition to the responsibilities described in the synodal canons cited above, the following obligations devolve upon the pastor:

I. Maintenance of school buildings, grounds, and equipment by means of adequate repairs and sufficient custodial services.

II. The provision of necessary facilities and supplies, including a school telephone, a fire detection system, and all devices requisite for complete fire safety.

III. Adherence to diocesan school regulations concerning the school calendar, the length of a school day, the size of elementary school classes, a non-teaching principal in a school with more than six classrooms, the establishment of a Home and School Association or a similar parents' association in every parish which has a school; the use of a written contract between a lay teacher and the school, the employment of lay teachers approved by the school office.

IV. The recruiting of needed lay teachers unless he has deputized the school superintendent in writing to act as his agent in procuring teachers, and the payment of a salary to lay teachers which accords with the current salary schedule established by the Catholic School Board.

5. Diocesan and Community Supervisors

All the schools of the diocese are visited by supervisors from the religious community which staffs the school. Elementary schools are also visited by diocesan supervisors, sisters chosen from communities whose members teach in the diocese. The latter are representatives of the superintendent of schools.

A. As a rule, community supervisors visit a school annually. Diocesan supervisors call upon a school at least twice a year for general supervision, and several times a year for supervision in a particular subject such as mathematics, music, or French. The length of time for supervising a school is determined to a considerable degree by the size and the experience of the staff. Obviously to supervise twenty teachers requires more time than to supervise ten, and a novice teacher should require a longer visit than an experienced teacher. [6]

B. Although supervisors may be required by their superiors to report from time to time about conditions in the schools, the primary work of the supervisors is not inspection. Rather it is to assist the teacher in the problems of instruction.

C. To the end that there may be no conflict in authority between the diocesan school system and a religious community, the function of a community supervisor in the schools of the Diocese of Providence is specified as follows:

I. To become well enough acquainted with the teachers of their communities so as to be able to advise the community superiors on matters of placement and reassignment.

II. To act as liaison between the provincialate and the religious teacher in the school.

III. To cooperate with the superintendent by studying the diocesan school regulations and to encourage the teachers of their community to observe these regulations.

IV. To avoid giving any orders or directions to the teachers of their community that may be in conflict with diocesan regulations or policy regarding cur-

riculum, testing, textbooks, method, or administrative matters.

V. To refer questions concerning school administration beyond the scope of their own authority to the proper diocesan school authorities, namely, the superintendent of schools or the pastor.

D. Principals and teachers should endeavor to make the visits of all supervisors as pleasant and profitable as possible. (For regulations concerning the visits of diocesan supervisors see Appendix A).

E. Each school has the responsibility to see to it that transportation is provided for a diocesan supervisor to her next destination.

F. Community supervisors are encouraged to call on the superintendent of schools upon the completion of their school visitation. Their observations and suggestions will be gratefully received. [7]

6. The Principal

The principal has the major responsibility for the educational effectiveness of the school and the coordination of all work in all departments.

A. It is the duty of the principal to observe implicitly administrative instructions issued by the superintendent and to give loyal support to his policies at all times. This includes keeping files so as to provide his or her successor with current information needed for continuity. (See Appendix B)

B. Some of the more important responsibilities of the principal are as follows:

I. To see that the diocesan educational program is followed by all teachers, and in parish schools to confer regularly with the pastor concerning school matters.

II. To see that the school records are properly filled out and safely kept.

III. To send required reports and requested information to the School Office promptly, including the emergency employment of a teacher. (see page 10)

IV. To accord to all lay teachers equal status, rights, and opportunities for advancement as those enjoyed by religious teachers.

V. To make the necessary arrangements with the health officers and other public officials so that the pupils in the school receive whatever health and social services are available.

VI. To see that regulations regarding fire drills are observed.

VII. To see that the required intelligence and other tests are administered.

VIII. To supervise the teaching in the school (special attention should be given to the younger teachers), and to make available to all teachers opportunity at regular intervals for private consultations.

IX. To hold regular faculty meetings. The primary aim of the faculty meeting is the improvement of instruction. No faculty meetings may be held from which lay teachers are excluded. [8]

X. To confer with parents regarding problems affecting their children.

XI. To see that occasional publicity in the press is given to the work of the school.

XII. To consult with the superintendent when local circumstances suggest the advisability of deviating from the school calendar or diocesan regulations.

C. In virtue of a ruling by the Diocesan School Board every principal of a school which has more than six classrooms must be a free or non-teaching principal.

D. A non-teaching principal may replace a classroom teacher who is ill or otherwise absent, but not for more than a total of five days during a given sickness or absence.

7. The Classroom Teacher

The prime factor for the success or the failure of the school is the spirit and personality, as well as the professional competency, of the teacher. Pope Pius XI expressed this thuoght very clearly in his encyclical, Christian Education of Youth:

> Perfect schools are the result not so much of good methods as of good teachers who are thoroughly prepared and well-grounded in the matter they have to teach; who possess the intellectual and moral qualifications required by the important office; who cherish a pure love for the youth confided to them because they love Jesus Christ and His Church, of which these are the children of predilection; and who have, therefore, sincerely at heart the true good of family and country.

A. Although religious teachers constitute the greater part of the teaching staff in the elementary and secondary schools of the diocese, the number of lay teachers in our schools is increasing with each year. Lay teachers are, no less than religious, an integral part of the Catholic educational structure. Once a teacher enters a classroom, his or her professional competence and dedication to the highest spiritual and cultural interests is what matters, whether he [9] or she be a priest, a religious, or a layman. Every effort should be made to indicate to lay teachers the esteem, the confidence, and the warmth in which they are held. In par-

ticular, they should be invited to participate in all faculty meetings and workshops.

B. Among some of the more apparent obligations a teacher should observe are:

I. Following the diocesan educational program, using the approved textbooks, observing all pertinent regulations contained in this handbook.

II. Cooperating with the directives of the principal in all school matters.

III. Making use of available educational aids, including school facilities and free materials such as the audio-visual aids obtainable at the Rhode Island Department of Education.

IV. Fulfilling supplementary duties which from time to time are assigned to a teacher.

C. Effective September, 1966, the teaching of prescribed courses in religion in the Catholic elementary and secondary schools of the Diocese of Providence is limited to those who hold a certificate for teaching that subject from the diocesan School Office.

8. Employment of Lay Teachers

"No one may assume the office of teacher in a parochial school or diocesan high school who has not been approved by the Diocesan School Board. (*Fourth Dioc. Syn.*, Stat. 357)

A. With respect to elementary schools, the School Board has ruled that before being hired a teacher must be registered with and personally interviewed by the superintendent or associate or assistant superintendent.

I. The fact that an applicant previously taught in a school of the diocese does not constitute approval

by the superintendent or his delegate. Explicit approval by the superintendent or his delegate is still required before such applicant may be employed. [10]

II. Part time, special-subject, and substitute teachers must be approved by the superintendent or associate or assistant superintendent, as well as full time teachers.

III. In an emergency the following apply:

a. If the emergency will apparently be limited to no more than five school days, a certified teacher or one who has had at least one year of teaching experience at the proper grade level, may be employed without a previous interview by and approval of the superintendent or delegate (the superintendent must be notified immediately however).

b. If the emergency will clearly be of one day's duration, a teacher who is not certified or who has not a year or more of classroom experience may be employed for that single day without the prior approval of the School Office. The principal must notify the School Office by telephone during the day.

B. In order to qualify for approval by the superintendent or his delegate, a teacher must have a bachelor's degree and some educational preparation and/or experience.

I. A secondary school teacher must have, in addition, a major or its equivalent in the subject area in which he is engaged to teach.

II. An elementary school teacher may be exempted from the requirement of a degree, provided he has acquired ninety college credits towards the degree

(the equivalent of three years of college), including credits in several education courses, and has had six weeks of supervised practice teaching or one or more years' experience in classroom instruction. He must earn at least six credits annually towards the degree, once he has been employed.

III. A former religious who has had three or more years of experience as a classroom teacher may receive a special exemption from the requirement of a degree because of his or her added training, provided such a one have at least sixty credits, including a number of basic education courses. [11]

C. Lay teachers employed in elementary and secondary schools should be placed under contract. Model forms of such contracts may be found in Appendices C and D. Contracts should be renewed no later than April 1, but there should be no renewal unless the teacher concerned has given evidence of competency and professional growth during the period of employment.

D. A lay teacher may freely seek employment in another diocesan school provided he fulfills the terms of the contract he has made with the school currently employing him. If he makes known to the superintendent his desire to teach in another school upon the completion of the academic year in his present school, he will be happy to assist him in the choice of another teaching position.

E. Common courtesy demands that no pastor or principal approach a lay teacher in another school with a teaching offer without first informing the pastor or principal of the school in which that teacher is employed.

F. A suggested minimum salary for lay teachers in elementary schools is determined and published from time to time and is reviewed annually by the School Board.

(see Appendix E) Presumably secondary school teachers will, in general, receive a higher salary.

G. The salary agreed upon shall be stated in terms of an annual salary and shall be paid in installments on a semi-monthly basis on the first and fifteenth of the month, or the second and sixteenth should a legal holiday fall on the first or fifteenth. For a teacher employed for a full academic year, the first payment is due on the first day of October and the final payment on the fifteenth day of the following July.

H. To the end that teachers have some security, no lay teacher who has taught in the same school more than two years may be discharged solely for the purpose of employing another teacher at a lower salary.

I. Whenever a teacher is to be dismissed during the school year, the superintendent of schools should be notified. [12]

J. Each full time lay teacher shall be entitled to ten days sick leave without deduction in pay. However, for the first five months he has been employed, a teacher shall be allowed only one day of sick leave with pay per month, this on a cumulative basis. A teacher may accumulate as many as, but no more than, thirty days of sick leave with pay.

K. Teachers who are over seventy years of age should not, as a general rule, be employed in diocesan schools. This is a rule that admits of some exceptions. However, experience within our school system and the universal advice of public school administrators support the general rule. Teachers over seventy usually are inferior in the classroom; they are unable to adjust to new methods, new text books, etc., and they are less patient with pupils. [13]

CHAPTER TWO

ADMINISTRATIVE PRACTICES

1. The School Calendar

"The Annual School Calendar has the approval of the Diocesan School Board. No holiday, nor partial holiday, shall be given without obtaining the written permission of the Superintendent of Schools."

A. The calendar published annually by the superintendent is the official calendar for the schools of the Diocese of Providence. It is to be faithfully observed. Permission must be obtained from the School Office to deviate from it.

B. The calendar accords with Rhode Island educational law which affirms that the school year shall contain at least 180 days (Gen. Laws of 1956, 16-2-3) and with the calendar drawn up by the Rhode Island Association of School Superintendents.

C. Provision is made in the calendar for making up a school day session canceled because of a storm or other emergency, by fixing the closing day of school several days beyond the 180th day. If in the course of the year no sessions are canceled, the school year will end several days earlier than the fixed day.

D. The following practices are to be observed with respect to the cancellation of a school day session and/or its being made up.

I. Summer retreats, June workhops, etc., should not be scheduled for religious teachers in the Diocese of Providence on the premature assumption that the school year will end no later than the 180th day of the school calendar; no teacher may absent himself from school to attend an activity so scheduled.

II. On a stormy day the decision as to whether a school should open for class sessions is to be based on the rule: Adopt the decision made for the local public schools. [14]

III. The decision of local authorities to close the schools for reasons other than a storm or similar emergency is not to be followed. On such occasions the customary bus services should be provided.

IV. Canceled school days should be made up at the end of the school year; they may not be made up during the February or April vacation week without express permission from the superintendent of schools.

2. The Length of the School Day

A. Following the school calendar means not only having school on the day specified by the calendar, but also having a full day session.

I. A full day session for Catholic schools at the elementary level consists of five and one-half hours, exclusive of lunch and Mass,* but inclusive of recess for pupils in grades 1-3.

II. A full day session on the secondary school level is at least six hours.

B. The ruling of the State Board of Education that a calendar day means, excluding lunch or recess time, five hours for elementary and five and one-half hours for secondary schools makes it illegal to account a half-day or a partial day a calendar day. Early dismissal or whole or partial holidays may not be granted with-

* The use of school time to participate in the Holy Sacrifice of the Mass on the feasts of All Saints, Ascension, and the patronal saint of the parish or school, as well as during the 40 Hours Devotion, is proper and commendable. (See also under *Religious Activities*, page 17)

out express permission of the School Office. Even then, the class time lost must in most instances be made up.

C. Class time regularly lost, e.g. because of weekly released time sessions during the established school hours, must be made up.

D. When the school is used regularly for social activities, classes may not be dismissed early in order to arrange for the social. [15]

3. The Opening of School in September

A. A suitable votive Mass, e.g., one in honor of the Holy Spirit or the patron saint of the school, should be celebrated at the beginning of each school year.

B. The first day or two of school may be devoted to the distribution of books and supplies, the organization of classes, the collection of health cards, and the other activities specified in Appendix F.

4. Faculty Meetings

Faculty meetings shall be held at least once a month, preferably more often. All teachers, lay as well as religious, shall be present. The problems of school administration should receive the least discussion possible. It is recommended that digests of practical articles from current professional periodicals be prepared and discussed, and methods of teaching be evaluated.

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6. Course of Study

Whenever there exists a course of study, syllabus or teacher's manual that outlines or otherwise defines the scope of an elementary or secondary school course, its use is mandatory for all who teach the course. Exceptions

to this regulation are granted; such exceptions should be sought in writing from the School Office.

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[16] 8. Religious Instruction

A. Systematic religious instructions must be provided in all schools of the diocese.

B. Modern catechetics requires a teacher with unusual aptitudes, specialized training, and such unction of the spirit that his words possess the force of a personal call. He should be so filled with his subject that he can freely improvize in discussion, dramatization, drawing, song, and prayer. A teacher so gifted and so permeated by the message of the Gospel is rare. Perhaps no teacher in a given school attains that ideal. But some teachers come nearer it than others. If our pupils are to hear the Good News so that their minds are enlightened and their hearts respond to the love of God and His Christ, if they are to be formed into vital, twentieth-century Christians, they should receive their religious instructions only from the very best teachers.

C. Inasmuch as the textbooks employed in religious instruction above the fifth grade require a high degree of catechetical preparation, religion should be a departmentalized subject in grade six through twelve.

D. Effective September, 1966, teachers of religion in grades six through twelve must be certified by the superintendent of schools.

9. Religious Activities

Religious formation is not confined to formal courses; nor is it restricted to a single subject area. It is achieved through the example of the faculty, the tone of the school, the manner in which the curriculum is taught, and religious activities.

[17] A. Care should be exercised against unreasonable use of school time for religious activities. A liturgical observance of a Holy Day, Mass on a first Friday, or the Stations of the Cross on the Fridays of Lent would seem reasonable. But to schedule daily or Lenten Mass for student participation during school time is unreasonable and is forbidden.

B. Similarly, there should not be a multiplicity of prayers or lengthy prayers, such as the Rosary, during school time. (For recommended prayers see page 39)

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[19] 14. Releasing Pupils to Attend Funerals

A. In the event of the death of any member of the clergy of the parish, or any one of the teaching sisters in the parish school, classes may be dismissed on the day of the funeral. It is to be understood that the children are to assemble and assist at Holy Mass for the deceased on that day.

B. When a member of the faculty of a high school dies, the students of his or her home room and/or other students chosen at the discretion of the principal may be released to attend the funeral services.

[20] C. The elementary or high school principal should determine which pupils should represent the student body at the funeral services of a pupil of that school. A class may be allowed to attend the funeral of a parent of a pupil in that class.

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16. Discipline

A. Discipline is a fundamental in Catholic education as it is fundamental in Catholic life. The only discipline that is worthwhile is that which is prompted by motives from within. Discipline is not regimentation; neither

does it imply a detailed surveillance of every action of the child. Correct training in discipline means that the young child must act in conformity with controls imposed by parents, teachers, and others in authority.

B. The following are suggested as means to classroom discipline:

I. Well-prepared classes tend to lessen disciplinary problems.

II. Voice control is important to class control.

[21] III. Positive, rather than negative motives elicit favorable response from most children; rewards and encouragement are more efficacious than threats and punishment. The positive approach in the correction of faults is suggested.

IV. An understanding of, and sympathy for, each individual pupil is of utmost importance.

V. Individual differences should be recognized and provision made for them.

VI. An individual conference with the pupil is recommended.

VII. Better understanding of the pupil results from parent-teacher conferences.

VIII. Withdrawal of privileges and removal from positions of responsibility are effective measures.

C. No teacher shall impose a fine as a means of punishment.

17. Expulsion of Pupils

The expulsion of a child from a Catholic school is a serious matter and should be invoked only as a last resort. The fact that a child presents a behavior problem is not in itself a sufficient reason for expelling the child. An

effort must be made to find the cause of the trouble. The social worker, the physician, the psychologist, and the psychiatrist can be of assistance in determining the cause of misbehavior. Frequently the cause is one which can be removed and the behavior problem solved. In such cases expulsion will not solve the problem, but may only aggravate it by removing the child from the influence of a Catholic school environment.

A. Every case of expulsion is an admission that even with religion in our program, we are unable to correct the trouble. Nevertheless, cases arise when expulsion is justified (see page 56 regarding high school expulsions). While it is not possible to settle all cases that would arise in this connection, two general conditions may be laid down that would justify an expulsion:

[22] I. Delinquency and immorality that would warrant commitment to a correctional institution, or would constitute a definite menace to the morale of the school.

II. Incorrigibility and persistent irregular attendance.

B. Before a pupil may be expelled from school, the parents must be notified. The parents should be asked to call at the school. Every effort should be made to enlist the cooperation of the parents in order to save the child and avoid invoking the extreme penalty of expulsion.

C. The following rules apply to elementary schools:

I. Before invoking expulsion, the pastor should make use of whatever resources are available to study the case.

II. No case involving possible expulsion shall be reported to the superintendent of schools without the knowledge and consent of the pastor.

III. Pending settlement, the superintendent may, in cases referred to him, authorize the temporary suspension of a pupil whose presence in school would constitute a menace to the other children.

IV. Within twenty-four hours of an expulsion, the name of the student and the reason for the expulsion shall be sent to the superintendent.

V. Whenever a student is expelled, the principal shall notify the public school superintendent of the city or town in which the student resides. (*unless that student is over 16 years of age*)

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[27] 26. CORRESPONDENCE

The principal is personally responsible for all correspondence bearing on school matters and shall have knowledge of all communications from the school. A copy of the correspondence shall be retained in the principal's office.

A. The signature on business correspondence should be that of a person, not, for example: The Sisters of....

B. Teachers shall not communicate with parents or public officials in writing or by telephone except with permission of the principal. Routine communications, however, may be delegated to teachers by the principal.

C. All correspondence to the state Department of Education must be channeled through the diocesan School Office.

27. OFFICIALLY ADOPTED TEXTBOOKS

The diocesan superintendent of schools, assisted by textbook committees, is responsible for the adoption of textbooks.

A. Official adoptions of textbooks are frequently made for some subjects both on the elementary and the second-

ary level. The use of such texts is mandatory on all schools. With regard to adopted textbooks:

I. When more than one text is adopted, a school may use any book so listed.

II. Texts in current use when a new adoption is made may continue to be used until they are worn out, provided it is not over three years from the time the new adoption took effect.

III. The superintendent may in special cases, especially for trial purposes, authorize the use of another textbook.

B. Recommended textbooks are often made, usually several for a given subject. A school is free to use anyone of the several recommended texts, but it must confine its choice to one of the recommended texts unless it has permission from the superintendent to do otherwise.

[28] 28. Textbook Law

A. State law requires each community to lend, free of charge, selected textbooks in science, mathematics, and modern foreign languages to any elementary or secondary student who resides in that community and who applies for the book according to procedures established by public school officials. It is imperative that principals and teachers, pastors, parents, guardians and others recognize that the non-public, including the Catholic, school is not a party to the loan and should not become involved in the transaction.

B. The following regulations are directed towards ensuring the non-involvement of diocesan schools in the loan of such textbooks:

I. No pupil shall be admonished, exhorted, or urged in any manner by any pastor, curate, principal, teacher, or other school official to apply for the loan of such a textbook or to procure a text for which he has already applied. The principal and/or the teacher

should explain to the pupil and his parent or guardian that the pupil is free to purchase the textbook from the school or to receive it on a loan basis from the city or town.

II. Every pupil shall be informed by his principal and/or teacher, no later than April 15 of each year (or in the case of applicants who have not been registered or accepted by April 15, as soon as possible), as to the title, author, publisher, and edition of the textbook in science, mathematics, or modern foreign language which he will use the following school year. In all likelihood that text will be available on a loan basis to the pupil from his community because in the selection of adopted or recommended texts in science, mathematics, and modern foreign languages the diocesan superintendent is guided by the list of textbooks approved for such loans, which is published annually by the state Commissioner of Education.

III. No student shall be coaxed, warned, enjoined or pressed in any manner by his principal, teacher, or other school official to return the textbook lent to him by the community. Each teacher should, however, shortly before the close of school remind students that honesty and the virtue of Christian responsibility demand the return of borrowed objects, such as library books or textbooks.

[29] IV. A principal shall not, even though requested to do so, send to the local public school authority a list of the pupils in her school and the science, mathematics, and modern foreign language text that each will need for the coming school year; nor shall she give an estimate of the number of pupils at each grade level who will need such textbooks. She may upon request give public school administrators the actual enrollment of pupils in each grade, for this is public knowledge; and she may verify the title, author, publisher or edition of a particular textbook in use or to be used in her school.

29. Guidance

Guidance shall be an integral part of the curriculum of the Catholic Schools of the diocese. The program shall be formal and explicit in the secondary schools, but must also show prominence in the elementary schools.

A. The guidance program shall not only concern itself with curricular problems and vocational aspirations and abiliies, but also with personal and religious counseling.

B. Besides the guidance director, every teacher shall be concerned with guidance. Consequently, all teaching personnel shall have knowledge of the basic facts concerning each child, including attitudes, abilities, and environment.

C. Co-operation between guidance personnel and faculty is of utmost importance for the effectiveness of this program.

30. Vocations

Students should be taught to appreciate all vocations: marriage and family life, single life in the world, and religious life. They should be made aware of the immense importance to the Church of vocations to the priesthood and to the religious life. They should understand how great is the need for religious vocations, and the necessity of asking [30] God for the favor of a greater number of vocations. The teacher can help recruit vocations by

A. Inculcating in the pupil a habit of praying for vocations.

B. Giving the pupil a knowledge of the work done by a wide variety of religious communities of men and women.

C. Appreciating his own importance in building correct attitudes toward the priesthood and religious life.

D. Having a professional attitude toward his work and radiating a spirit of happiness and satisfaction.

31. Vocation Talks

Requests from outside speakers to talk on vocations must be referred to the Director of Vocations. No unauthorized priest (except priests of the respective parish) is permitted to address the pupils of any school in the Diocese. An authorized priest is one who has received specific permission from the Chancery, the Superintendent of Schools, or the diocesan Director of Vocations.

32. Mission Program

The primary objective of the Mission Program in both the elementary and secondary schools should be the forming of mission-minded Catholics. Mission activities will be furthered by teachers, who being mission-minded, integrate mission information with their teaching. This is especially true in the social sciences, as well as religion.

33. Retreats

A. Retreats and days of recollection form an integral part of our religious program in the Catholic schools. In the minds of the faculty and students, the retreat should be one of the biggest events of the year. Students should be notified well in advance concerning the time of the retreat and the purpose of the retreat.

B. It is recommended that seniors, and perhaps juniors, in secondary schools where the class enrollment will permit, make a retreat whose format is a modification of the cursillo.

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[32] 35. Public Relations

A. Public relations signifies the sum total of all impressions made by the school itself and by the various persons connected with it.

B. The following suggestions are offered as means for attaining good public relations:

I. Educational excellence — the quality of classroom teaching cannot be concealed; it is a favorite subject for local conversation.

II. Participation in community activities, including educational conferences, panel discussions, and work shops, and race relations, anti-poverty, and approved ecumenical programs.

III. Open house programs to which the public is invited, especially neighborhood school administrators and teachers, members of local P.T.A., etc.

IV. Judicious releases concerning significant school activities or accomplishments to the news media, in particular The Providence Visitor.

V. Open and courteous communication with parents with the provision for

a. Frequent conferences, at hours convenient to all concerned to discuss pupils' problems.

b. A fair hearing on the part of the principal and teacher regarding complaints and criticism.

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[35] 39. Salesmen Visiting Schools

A. When salesmen call at a school, the principal will often ask them for some evidence from the superintendent of schools for authorization to visit the schools. For the guidance of pastors, principals, and teachers, the following is the diocesan policy in such matters:

I. The superintendent of schools has no right to forbid any salesman to represent his products in our schools. On the other hand, any specific written authorization to do so may be distorted into an endorsement of the product offered for sale. Hence, the superintendent will not issue a letter to a salesman when it is a question of merchandise which can be examined before it

is purchased, i.e., books, charts, globes, teaching materials, etc.

II. On the other hand, a letter may be given when it is a question of something which cannot be examined by the individual principals before it is actually used in the school, i.e., a lecture or entertainment program.

B. Occasionally the superintendent may want to recommend a book or item of teaching equipment. When this is done, it will be by means of the diocesan school bulletin.

40. Death Notices

The School Office should be notified of the death of any members of the faculty (priest, brother, sister, lay teacher) who has been associated with the schools of the diocese, in order that prayers for the deceased may be recommended in our news letters.

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CHAPTER THREE

POLICIES AND RULES PROPER TO ELEMENTARY SCHOOLS

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2. Classroom Enrollment

A. The number of pupils in a classroom may not exceed forty.

B. The Catholic School Board is aware that this ruling places many pastors in a difficult position. Unhappily, they must turn away children who wish to attend parochial school because the number seeking admission to a given classroom is greater than forty. The Board is convinced after careful study that, however harsh the ruling may seem, it is necessary. Due regard for individual differences among pupils, for proper classroom management and for the physical, emotional and mental well-being of the teacher requires that the

maximum number of pupils in a classroom be not more than forty.

3. When More Than Forty Apply for The First Grade

When the number of applicants for the first grade exceeds forty per classroom, the following suggestions are offered to help pastors select those pupils who will enter the first grade in September:

A. Use the Metropolitan Reading Readiness Test or similar test at pre-registration sometime in March, April or May. This should eliminate children who are likely to be failures during the first year. [38]

B. If there are still more applicants than can be accepted, take the forty oldest children. This is arbitrary, but it has one advantage: the older children are not as likely to fail in the first grade as the younger ones.

C. Although wealth should never serve as a criterion for accepting a pupil into a Catholic school, all other things being equal, it would seem fair to give preference to a child whose parents support the parish. Regular use of the budget, rather than the size of the contributions, would appear equitable. It indicates whether parents regularly attend Mass.

D. When a child fails in the first grade, he should be allowed to remain in the school and repeat the grade.

E. Where there are kindergarens, promises of entry into the first grade should not be made until the number of possible first grade failures has been ascertained. The total number in the first grade, including the repeaters, should be no more than forty. The Metropolitan Reading Readiness test is a good way to decide which kindergarten children should not be accepted into the first grade.

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[39] 5. Tardiness

A. The prevention or correction of habitual tardiness is the responsibility of the parents, pupil, teacher, and principal. On occasion a conference between the teacher or principal and the parents should be arranged to correct repeated tardiness.

B. A pupil may not be accounted tardy if he is late for Mass, but is on time for the opening of school.

6. Daily Prayers

The following schedule would seem to provide a reasonable sufficiency of daily prayers and to conform to the principle ennunciated under *Religious Activities* (see page 17):

A. Opening of the School Day: *Morning Offering, The Lord's Prayer, Hail Mary,* and the *Apostles' Creed.*

B. After Recess (grades 1-3): *The Memorare*:

C. Noon dismissal: *The Angelus,* the Doxology: *Glory be to the Father, etc.*

D. Beginning of Afternoon Sessions: *Acts of Faith, Hope,* and *Charity, The Confiteor.*

E. Dismissal: *The Act of Contrition.*

7. Time Allotment of Subjects

A. The major subjects in grades 4 through 8 are religion, English, reading, mathematics, science, and social studies. The minor subjects are spelling, penmanship, a modern foreign language, physical education, music, and art.

B. A schedule which indicates the weekly time allotment to each subject and which provides in some detail clear, meaningful, and manageable daily programs in conformity with the weekly time allotment will be reviewed annually and furnished to each teacher before the beginning of each school year.

C. Where there is more than one grade in a room, the school must adjust its program as best it can to the diocesan course of study and time schedule. Subjects might be alternated, e.g., when the the seventh grade and eighth grades are combined, both grades would be well advised to take seventh grade social studies one year and the eighth grade work the next year.

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[44] 20. Home and School Association

By order of the diocesan School Board there must be in every parish which has an elementary school a Home and School Association, or a similar group of parents whose children attend the school. Among the more important purposes of such an organization are:

A. Promoting among parents and teachers a deeper appreciation of Catholic education.

B. Exerting leadership within the community towards bettering the environment educationally and morally.

C. Assisting parents in the solution of common problems of child behavior.

D. Making clear to parents and teachers their mutual educational responsibilities.

E. Fostering increased cooperation between parents and teachers in the discharge of their responsibilities.

[45] 21. Parent-Teachers Conferences

A. Shortly after the first-quarter examinations there shall be a private conference between the teacher and the parents of each pupil. A schedule of such conferences should be arranged so as to allow a fifteen minute period for the parents of each child and the parents should be invited to come at a specified time. At this conference the student's achievement in the light of his

ability, his strengths, and his weaknesses should be discussed.

B. It is recommended that a second conference be held with the parents at the end of the third quarter.

C. At the pastor's discretion the report card might be distributed to the parents on the occasion of the conference.

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[47] 27. Pupils Requiring Special Instruction

There are some pupils who require special instruction because of some physical or mental handicap. The physical handicap may be subnormal hearing or eyesight, or a physical impediment which requires special transportation to school for the physically handicapped. The mentally handicapped are those who cannot profit by regular classroom instruction, but can succeed in special classes arranged for children of this type. Since facilities are not available in the parochial schools for the care of such children, arrangements may be made for their entrance into a public school that may have facilities available. It is the responsibility of the pastor to see that their religious instruction is continued.

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29. Eighth or Ninth Grade Graduation

A. Since leaving he eighth or the ninth grade no longer represents the end of formal education, graduation exercises on the completion of the eighth or the ninth grade do not have the significance they once had. Their elimination is to be encouraged. Instead, the pastor might distribute a diploma or a certificate in the manner he distributes report cards. A Mass and Communion breakfast would be very appropriate. Every effort should be made to keep expenses at a minimum. Class pins or rings, expensive picture taking, etc., are forbidden.

B. No graduation or other exercise which signifies the termination of school sessions may take place earlier than a week preceding the closing date of the school year; this in accordance with the recent ruling of the state Board of Education concerning calendar days of the school year.

C. Only the official diocesan diploma may be distributed within or without graduation exercises. Whether there should be a diploma at all is left to the discretion of the pastor.

D. The eighth or ninth grade student who is to receive the kind of promotion described above under *Special Promotion* may participate in the Graduation Exercises, if they are held. He may receive a diploma. But it should be made clear to him and his parents or guardian that the diploma does not signify readiness for regular high school courses, and that the notation stated above will be sent on with his report card.

E. A transcript of the seventh and eighth grade marks, personal and test data, and health record should be sent to the high school the elementary school graduate seeks to enter or has entered.

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31. Altar Boys

The minimum number of boys required by the liturgy for funeral Masses or other functions during school hours may be excused from class. Careful attention should be directed to the end that:

A. The boys selected are those who can be absent from class with the least harm to their studies.

B. Assignments for serving at funeral Masses are rotated so that the same pupils are not consistently absent from classes.

C. Altar Boy rehearsals may not be held during school hours.

32. Choir Boys

Choir boys should not be released from school to sing at a funeral Mass. Nor should they engage in rehearsals during school hours except for the period allotted for the teaching of school music.

[61]

APPENDIX A

Suggestions for Receiving a Supervisor

1. When the Sister Supervisor calls to arrange for a visit, she should be asked if she wishes a tentative program for class visitation ready, and if she desires to hold a faculty meeting.
2. A list of the names of the faculty members, together with the grades they teach and their room numbers, should be prepared for her visit.
3. Permanent record cards and time schedules should be available.
4. It is recommended to have ready, in case they are requested, lesson plans, records of grades, and samples of children's work.
5. The children should be informed of the name of the supervisor so that they may greet her properly when she enters and leaves the classroom.
6. It is advisable to instruct the entire class on how to hand a book to a visitor, even though only one child is appointed to present the textbook.
7. When the supervisor leaves the room, it is often helpful to have a child accompany her to the next class or to the office.
8. Teachers are urged to ask the supervisor, upon the completion of her visit, if she has any suggestions.
9. When the supervisor leaves the school after the visit, transportation should be provided for her, unless she has made other arrangements.

[62]

APPENDIX B

Administrative Information for Incoming Principals

It is incumbent upon all principals to have the following information on file and up to date so that it will be immediately available:

1. Aggregate attendance
2. Book orders
3. Business firms where purchases are made (uniforms, supplies, miscellaneous materials)
4. Confraternity of Christian Doctrine information: participating public schools, records used, etc.
5. Minutes of faculty meetings
6. Insurance data: Amount of student accident insurance premiums collected, deposited, and forwarded to the School Office; list of pupils (see regulations pertaining to Student Accident Insurance, chapter two, number twenty); accident forms.
7. Lay teachers: their name, address, phone, salary, contract, academic and professional background, etc.
8. Organizations: how registered, i.e., individual or school, etc.
9. Patrol boys
10. The names of, the officers of, and pertinent data concerning the Home and School Association or similar groups
11. Promotion lists
12. Registration time and procedure for Grade 1
13. School handbook
14. Special collections permitted
15. School health data: name, address, and telephone number of school physician, dentist, nurse and other school health officials, e.g., psychologist, speech therapist; a copy of written school health policies and standing orders (see chapter two, number eighteen)
16. Tuition rates

[63]

APPENDIX C

Proposed Contracts for Lay Teachers of Regular Class Groups

Articles of Agreement

Made in ....., Rhode Island on the .....
(city or town)
day of ....., 19.... between .....
pastor of ..... Church (hereafter called the first party) and ..... residing at .....
(teacher) (street,
..... (hereafter called the second party).
city or town and state)

Witnesseth

1. The first party hereby employs the second party and the second party agrees to work for the first party as a teacher in the ..... grade of ..... School assigned to him (her) by the first party or his representative.

2. It is agreed that if the work of the second party is not being performed with professional dignity and diligence and in a manner satisfactory to the first party, then in such event, the first party shall have the right at any time during the period of this agreement to discharge the second party upon the payment to him (her) of ..... month(s) salary and upon such discharge and payment, the first party shall be released from all further obligations or liabilities hereunder.

3. The first party shall pay to the second party the sum of ..... dollars per year in ..... payments on a semi-monthly basis at the rate of ..... dollars per payment on the first and fifteenth day of each month, beginning on the ..... day of ....., 19...., and ending on the ..... day of ....., 19..... In the event [64] that a legal holiday should fall on the first or the fifteenth day of a month, the pay-

ment date shall be one day later, viz., the second or the sixteenth day of that month.

The terms of this agreement shall begin on the ..... day of ....., 19...., and terminate on the ..... day of ....., 19.....

In witness, the parties have here set their hands and seals on the ..... day of ....., 19.....

..... Pastor

..... Teacher

* * * * * * * * * *

Plaintiffs' Exhibit No. 15

[Deposition of Sister Mary Virginia Kelly, Teacher at St. Thomas' School, Providence, Rhode Island]

* * * * * * * * * *

[1] SISTER MARY VIRGINIA KELLY,

first having been duly sworn, testified as follows:

Examination by Mr. Shine

Q. 1. What is your full name, please? A. Sister Mary Virginia Kelly.

Q. 2. And in what order are you a sister? A. Religious Sisters of Mercy.

Q. 3. Are you presently a teacher in a Roman Catholic parish school? A. Yes, sir, Saint Thomas School, Edendale Road, Providence.

Q. 4. Is that school affiliated with a Catholic parish? A. Yes, Saint Thomas parish.

Q. 5. Is the school an elementary school? A. Yes.

Q. 6. What grades? A. Grades one to eight.

Q. 7. And where is the school run, is it run in a separate school building or in the same building as the parish church? A. No, it is a separate school building. I was going to say it is a new building comparatively.

Q. 8. Is the building on the parish property itself? A. Yes.

[2] Q. 9. And it is connected in any way physically with the parish building? A. No.

Q. 10. Does the name of the school appear outside of the building? A. Yes.

Q. 11. And it is the same name as the parish, I take it? A. Yes.

Q. 12. Is there a cross or a crucifix on the outside of the school building? A. Yes.

Q. 13. In the school building are there any crosses or crucifixes throughout the building? A. There is a crucifix in each classroom.

Q. 14. Are there any statues of a religious nature? A. Yes, one statue in each classroom.

Q. 15. A religious statue? A. Of the Blessed Mother, yes.

Q. 16. Are there any pictures or paintings of a religious nature throughout the building? A. Only in the classroom where religion is taught, not in any other room.

Q. 17. What subjects do you teach? A. Mathematics, science, music and art.

[3] Q. 18. Now, in your classroom there is a crucifix and a statue; is that right? A. Yes.

Q. 19. Are there any other religious symbols in your classroom? A. No.

Q. 20. How many students do you teach? A. I teach about, well, there are about 35 and 38 in the sixth grade and the eighth grade, but the fourth and seventh are both 40.

Q. 21. Now, do you have a home room, so-called? A. Yes, the seventh grade is my home room.

Q. 22. How many students are in that home room class? A. Forty.

Q. 23. What time does school start in the morning? A. 8:30.

Q. 24. Are there opening exercises in school? A. The children say prayers led by one of the three or four of the children who are trained to lead the class in prayer.

Q. 25. That is at the beginning of the day? A. Yes.

Q. 26. Are these formal Catholic prayers? A. Yes.

Q. 27. This is done in the room, in your home room; is that [4] right? A. Yes.

Q. 28. You are present? A. Many times I am not because while they are saying prayers there are various other things that I do. Sometimes I am there. This morning I was, but sometimes I am not.

Q. 29. If you have no other pressing duties ordinarily you are there? A. Yes.

Q. 30. You say the children lead the prayers? A. Yes.

Q. 31. Have they always led the prayers at the beginning of class? A. Well, it depends upon the teachers. Some teachers allow it and some teachers lead the prayers themselves. I think it depends upon the individual.

Q. 32. How long have you been doing it this way? A. Well, only this year because I have only been teaching in Saint Thomas this year.

Q. 33. Where did you teach prior to that? A. For the past four years I was administrator at Pine Harbor School in Pascoag for retarded children.

Q. 34. Is that a Catholic school also? [5] A. No, it is a non-sectarian. It is for severely and profoundly retarded children.

Q. 35. Who runs that school? A. We purchased the school from Miss Marjorie Gilmore six years ago.

Q. 36. You say "we?" A. The community.

Q. 37. It is a town that runs that? A. No, the Religious Sisters of Mercy.

Q. 38. They own the school and run the school? A. Yes.

Q. 39. Are there prayers said at any other time of day for the home room class other than at the opening of school? A. Just the opening class and the closing of class at half past 2:00 in the afternoon.

Q. 40. Who leads those? A. Also the children.

Q. 41. That is done in similar fashion as to the opening in the morning.? A. Yes.

Q. 42. Is that also a spoken form of Catholic prayer? A. Yes.

Q. 43. During the course of the day, do the children from your [6] home room stay in that room or do they leave from time to time? A. No, they move from that room into the sixth and into the eighth grade at various times.

Q. 44. For what purpose do they move to other rooms? A. The teacher in the eighth grade teaches English, religion, just English and religion, and the sixth grade teacher teaches social studies, spelling and phys-ed.

Q. 45. Now, the religion that you refer to, is that formal Catholic religion that is taught? A. Yes.

Q. 46. Is that taught in your classroom? A. No, the eighth grade teacher teaches my class religion in her own room.

Q. 47. They leave your room to go to her? A. They leave me at quarter of 10:00 in the morning.

Q. 48. Does another class come in? A. The sixth grade comes in for math and science.

Q. 49. During the course of the year are there any religious programs or services at the parish that the school participates in? A. Well, the children are permitted to go to 8 o'clock Mass that is taking place in the church, if they wish to. It [7] is not compulsory on—on their own initiative.

Q. 50. Do they do that every morning? A. Well, the Mass is there every morning.

Q. 51. That is voluntary? A. Yes.

Q. 52. Are all of the children expected to say the prayers in the morning and in the afternoon at the end of school? A. In the classroom?

Mr. Shine: Yes.

The Witness: Well, I mean, they say prayers, but not every child, it depends upon the child himself.

Q. 53. Are there services that are held at the parish itself from time to time during the school year that the student body and faculty go to? A. We have assemblies in the auditorium which is also a cafeteria, but that is the only thing that the children attend.

Q. 54. Where is that located, in the parish building? A. Right in the same school building.

Q. 55. And not in the parish building? A. No.

Q. 56. Are there masses of one sort or another that from time to time the students attend? [8]A. No.

Q. 57. In the parish? A. Not in the school building. The only Mass they attend, if they wish, is the 8 o'clock Mass.

Q. 58. Are you familiar wih the Catholic Teachers Institute? A. Yes.

Q. 59. Have you attended that in the past? A. Yes.

Q. 60. Are all teachers in the Catholic parochial schools expected to attend that institute? A. Well, it is advocated, not all attend all the time.

Q. 61. Some do not attend as advocated; is that right? A. Well, there are some that don't on occasions when something else comes up more important. I myself would not attend for the past few years. This has only been for one day. Formerly, they were held at LaSalle Academy.

Q. 62. Generally speaking, do all of the teachers attend those? A. Yes.

Q. 63. Does that include sisters as well as lay teachers? A. Yes.

Q. 64. As far as you know, does that include sisters and lay teachers who teach so-called secular subjects entirely? A. Yes.

[9] Q. 65. What sort of program takes place or took place at, say, the last session? A. They had a speaker. I don't know who it was. I can't remember offhand. They usually discuss the role of the Catholic school in the community and subjects such as that.

Q. 66. Any other areas or matters that are discussed or considered at these meetings that you can recall? A. I

can't recall too many. Many times there is a speaker on literature of some particular subject that the schools are working at that year. I know when science came in that many of the talks were given on science.

Q. 67. This year, for example, in your classroom have any students asked to be excused from participating in the prayer at the beginning or end of the day? A. No.

Q. 68. Do you know of any such request from other teachers in your school? A. Not to my knowledge, no.

Q. 69. You spoke a moment ago about the role of the Catholic school in the community and you said that was discussed at the Teachers Institute. What would you say as a teacher, do you have any opinion as to the role that the [10] teacher in a parochial school plays in the community? A. Well, the role according to the religious thinking of the Catholic today is that as young adults going into the community they should hold a Catholic attitude toward different things they meet with and yet it is not totally Catholic. It is a Christian attitude. As teachers we by our example particularly and our handling of the children try to inculcate in them the same Christian attitude.

Q. 70. Do you feel that by way of your example and the way the sisters handle the school and run the school that there is a tone or atmosphere that exists in the parish schools that serves the purpose that you have just mentioned? A. Well, of course, as religious we are toned to discipline and we try to exert discipline with the children so they will be open to studying and to the proper attitude toward their work.

Q. 71. Is there a religious atmosphere that permeates the school by way of setting an example? A. Just the teachers themselves. I don't think there is an overall religious atmosphere.

Q. 72. In your school, I do not recall as you mentioned, how many students are there, do you know, approximately? [11] A. There are about 40 children in each classroom so

there are eight classrooms. That would be 320 children. I don't know the total enrollment.

Q. 73. Do you know if there are any non-Catholic students in the school? A. Not to my knowledge. I don't know all the children because I am new in the school so I couldn't say.

Q. 74. How many teachers are there? A. Eight.

Q. 75. How many of them are sisters? A. Six.

Q. 76. And how many lay teachers? A. Two women.

Q. 77. They are not sisters? A. No.

Q. 78. You testified before that you were a member of a teaching order; is that right? A. Yes.

Q. 79. Do you have any contract of employment with the parish school? A. I signed a contract with the school, yes.

Q. 80. And who signed that contract as the employer? A. Father Dunn, the pastor.

[12] Q. 81. He is the pastor of the parish? A. Yes.

Q. 82. How long a period of time does that contract run for? A. I signed it for two years.

Q. 83. It is a two-year contract and you are paid on a yearly basis? A. Yes, 10 months, a 10-month basis, $7,000.

Q. 84. $7,000 per year and that is paid over 10 months; is that right? A. Yes.

Q. 85. You have applied for Salary Supplement Aid; is that right? A. Yes.

Q. 86. Have you been told by the State authorities whether or not you have been approved for that? A. Well, the only recognition of it I have is that it was in the paper that my name was mentioned.

Q. 87. As having been approved? A. Yes.

Q. 88. Now, if Salary Supplement Aid were to be given to you, do you know how that payment would be handled in connection with your contract with the parish? A. The check would come to me and it would come in two sections [13] so I imagine it would be that Father would make up the residue toward the $700 when I receive the check. In

other words, if I received $500, then he would give me $200 during whichever month that came.

Q. 89. In other words, is it your understanding that any payment you would receive under the Salary Supplement Bill would be taken in effect by the parish as a credit on the salary they owe you? A. Yes.

Q. 90. Now, do you think the continuance or the continued operation of the Catholic parochial schools is important? A. Well, I do and I don't. There are factors for it and factors against it. Mostly, I think we as religious educators have a place in the world and in the community and our prime work is education so that I feel that if we are able to educate young people I think we have the right and duty to continue in Catholic schools.

Q. 91. Would you like to see the parochial schools continue to carry out their functions as they presently do? A. Yes.

Q. 92. Why? A. Well, I feel as a teacher myself and as a religious that is my work and I feel I wish to continue doing that work.

[14] Q. 93. What functions do you feel that it serves to continue to do this work in a parochial school? A. Well we don't differ from the public schools in any way, except that we are religious teachers. In the school they get the same education they receive in the public school and many parents, Catholic parents, would like to have their children in parochial schools and would like to keep the parochial schools in existence, mainly because of the religious training that is given during the religion period.

Q. 94. So that you would say one of the principal functions of the parochial schools is to have available the formal religious training for the students in conjunction with their other education? A. Yes, to teach the religion formally because otherwise we would not reach the children except in C.C.D. class and then you do not get them at the early age you do when you handle them right from the first grade.

Q. 95. What was that C.C.D. you just used? A. Those are the catechetical classes held for public school children after school certain days of the week.

Q. 96. From the standpoint of teaching religion to the children, is it more desirable to have them go to public school [15] than have these classes after school or more desirable to have them attend the parochial schools where they are available? A. Well, of course, that is a big question that is right up before religious communities right now. There are many of us that feel that the children do not like to come to one school right after they have been to another school and so many times there are many children that you lose, whereas if they have it during their school schedule then you are able to reach them better. I was going to say it might work out eventually, but there has not been too much study done on it and practice of it as yet.

Q. 97. From your personal experience, do you feel that this is sufficient reason to want to continue the parochial schools with the format they presently operate under? A. Yes, sir.

Q. 98. That is to say, that it would make it more convenient to continue the religious education of these children? A. Well, I think it is more effective that way.

Q. 99. In terms of having them present physically and available? A. For their religious lesson, for their lesson in religion.

Q. 100. It would be less desirable, I take it you feel from your experience, if they were in public schools and had the [16] obligation to come after school? A. Yes, because many times many of the children, for instance, you have preparation for a sacrament and they do not come. They miss their religious lesson and as a result they are not fully prepared for the sacrament.

Q. 101. In addition to the purpose of making it more convenient to teach formal religion, is there a benefit that the schools perform, in your opinion, with respect to the

religious atmosphere and the close association, for example, with the religious institutions that are of benefit? A. No, I don't feel so. I mean, when we are teaching other subjects, for instance, they are exclusive from religious exercise and religion so it is just for the fact the children are getting their religious education as a formal subject in Catholic schools.

Q. 102. Are most all of the students in the school members of the parish? A. No, we have children from two or three parishes. Some children come from Johnston and some children come from lower down on Manton Avenue.

Q. 103. Would you say that more than half of the children are from the parish? A. Yes.

[17] Q. 104. Is it part of the approach of the parochial schools to encourage and further activity and participation by students and their families and parish activities? A. Well, they have the C.Y.O. for the older children. The younger children do not have too many activities. They tend more to go into the Girl Scouts and Boy Scouts.

Mr. Shine: I have no further questions.

Examination by Mr. Collins

Q. 105. Sister, could you explain to us the circumstances under which you left the job you had last year and you are in the job you are in this year? A. Well, my mother is quite feeble. She is 78 years old. It was a question of putting her in a nursing home or at the Medical Center and so I asked permission of the Community to live with her and take care of her and support her. I was given permission and I was approached by the principal of Saint Thomas School and so I accepted the position with her.

Q. 106. The money that you receive, do you give any of that to the Order? A. No.

Q. 107. Is that used on the expenses for you and your mother? A. Yes.

[18] Q. 108. And I take it you do live with your mother? A. Yes.

Q. 109. Where do you live? A. Jane-Mor Apartments. It is 4 Second Street, North Providence.

Q. 110. Did you ever think at all about teaching in the public schools? A. Yes, I had permission to teach in the public schools in secular clothing.

Q. 111. Were you given an offer by a public school? A. Yes, Providence called me.

Q. 112. Was this before or after you had taken this job? A. After I had accepted this.

Q. 113. What courses do you teach? A. Math, science, art and music.

Q. 114. Do you inject any religion into any of those courses? A. No, because there is no occasion to. They are all secular subjects.

Examination by Mr. Shine

Q. 115. If you had an offer to teach one of the subjects you teach in the public schools and an otherwise similar offer to teach such a course in the parochial schools, Sister, which would you prefer to teach in?

[19] A. Well, I would prefer as a religious teacher among religious, but I would not hesitate to teach in the public school.

Q. 116. You would be prepared to teach in public schools, but you would prefer to teach in the parochial schools? A. Well, as a religious it depends upon what the offer was.

Mr. Shine: That's all.

Mr. Allen: I have no questions.

Mr. Collins: No questions.

Plaintiffs' Exhibit No. 16

[Deposition of William L. Bergeron Teacher, at St. Joseph's School, Providence, Rhode Island]

* * * * * * * * * * *

[1] WILLIAM LEWIS BERGERON, first having been duly sworn, testified as follows:

Examination by Mr. Shine

Q. 1. What is your full name? A. William Lewis Bergeron.

Q. 2. Where do you live? A. 83 Newton Street, Pawtucket.

Q. 3. Where do you work? A. Saint Joseph's School in Pawtucket, Walcott Street.

Q. 4. Is that a Roman Catholic parish school? A. Yes, it is.

Q. 5. Which parish is it connected with? A. Saint Joseph's parish.

Q. 6. What do you teach there, sir? A. I teach science, French and reading.

Q. 7. For what grade? A. Seventh and eighth.

Q. 8. Have you applied for Salary Supplement Aid? A. Yes, I did.

Q. 9. Have you been notified as to whether or not you have been approved? A. No, I haven't.

Q. 10. How long have you been teaching at the school, sir? [2] A. I started in this school in September.

Q. 11. You taught previously in the parochial schools? A. I taught the second semester at Mercy Mount Country Day School, Cumberland.

Q. 12. Anything prior to that? A. I did some substitute teaching during the 67-68 school year.

Q. 13. When you were substituting, where did you substitute? A. In the public schools of Pawtucket.

Q. 14. And last year during the second semester when you taught, what subjects did you teach? A. I taught mathematics and reading.

Q. 15. Now, how many students, if you know, approxi-

mately, are in the school you presently teach at? A. Approximately 200, somewhat over that.

Q. 16. How many people on the faculty? A. There are four lay teachers and five nuns.

Q. 17. Who is the principal? A. Sister Mary Rose.

Q. 18. Who is the pastor in that church? A. Monsignor Beane.

Q. 19. Do you have a contract for teaching there this year? A. Yes, I do.

[3] Q. 20. Do you have a written contract? A. Yes.

Q. 21. What is your salary for the year? A. $6,000.

Q. 22. How is that paid to you? A. In bi-weekly installments continuing through the year.

Q. 23. Twelve months a year? A. Just during the school year, the 10 months.

Q. 24. Every two weeks you get paid? A. Yes.

Q. 25. Are those payments calculated on the $6,000 figure? A. Yes, they are.

Q. 26. Do you have an understanding with the parish—

Mr. Shine: Strike that.

Q. 27. Who is the employer under your contract? A. Monsignor Beane is the one I made the contract with, the pastor.

Q. 28. Is there any understanding that you have with him in the event that you are paid any Salary Supplement Aid by the State? A. What would happen, most likely, is that he would simply discontinue paying us when the Supplement is [4] given and resume again when the Supplement comes out so that the pay stays continuous.

Q. 29. What time does school start at your school? A. It starts at 8 o'clock.

Q. 30. Do you have a home room session? A. Yes, I do.

Q. 31. How many students? A. Twenty-six.

Q. 32. Do you know if they are all Catholics? A. Yes, they are.

Q. 33. What is the program in terms of starting of the school day, are there opening exercises, for example? A. There is a prayer at 8 o'clock at the bell and a home room period.

Q. 34. How long does that last? A. Fifteen minutes, then the classes are divided. It is departmentalized.

Q. 35. Are there other lay teachers in your school who have applied for Salary Aid, do you know? A. There are two more.

Q. 36. What do they teach, do you know? A. Mrs. Trainor teaches mathematics and Mrs. Lesperanz.

[5] Q. 37. And what does the second teacher teach? A. She teaches English primarily. We all teach reading.

Q. 138. Do they both have home room sessions? A. Yes, they do.

Q. 139. Getting back to the beginning of the day, what time does instruction actually begin, what time does the formal instruction begin? A. At 8:15.

Q. 140. Who supervises the prayer the first thing in the morning? A. I have one of my home room students lead the prayers.

Q. 141. Under your supervision? A. I say the prayers with them.

Q. 142. But you are present? A. I am present, yes.

Q. 143. What does the student do, come to the head of the class? A. No, they stay at their places.

Q. 144. Is that done every day? A. Yes.

Q. 145. Do the same students do that every day? A. Different students every day.

[6] Q. 146. Is it a little bit of an honor to give to the students? A. Well, not really.

Q. 147. Why do you have the students lead the prayer? A. Well, as I understood the terms of the Supplement, we were to refrain from teaching religion and using it during school time so that I wasn't sure as to whether this would come under it so I just had them say the prayers. They know them. They have been saying them for years.

Q. 148. How long have you been following this practice? A. Since September, since the first day.

Q. 149. What prayer is said, is it the same prayer or different prayers? A. Usually the morning offering and an Our Father.

Q. 150. Are these formal Catholic prayers? A. More or less formal, yes.

Q. 151. All of the students rise; is that right? A. Yes.

Q. 152. And you call on a student to lead the prayer? A. Just to remind them it is their turn.

Q. 153. But everyone in the classroom says the prayer in unison? [7] A. Yes.

Q. 154. You say it with them? A. Yes.

Q. 155. Do you have a desk? A. Yes.

Q. 156. Do you stand up behind the desk? A. I usually stand one side of the room.

Q. 157. Are the prayers said at any other time of the day in your school, in your classroom? A. Not in my classroom, no.

Q. 158. In other classrooms? A. Yes.

Q. 159. And what time of the day are they said, do you know? A. Before and after the lunch period and at the close of the school day.

Q. 160. These prayers are not said in your classroom? A. No.

Q. 161. Do you know if they are said in the classroom where these other two lay teachers that you referred to teach? A. I don't know.

Q. 162. Do you know if the other lay teachers you have referred to who have applied for Salary Aid, do you [8] know if they have opening exercises similar to the way you have them? A. I imagine they do.

Q. 163. Do you know one way or the other from personal knowledge? A. No, not from personal knowledge.

Q. 164. Now, is there a formal religion class taught during the course of the day at some time or other during the week? A. Yes.

Q. 165. And when is that religion taught? A. It is taught for a half an hour in the afternoon to the Junior High people.

Q. 166. Taught to your students? A. Yes.

Q. 167. Who teaches that? A. Sisiter Viola, the seventh grade teacher.

Q. 168. She is another teacher at the same level as you are at the seventh grade? A. Yes.

Q. 169. Where is her room? A. It is across the hall from mine.

Q. 170. She comes across the hall and teaches the religion [9] course? A. No, the students change classes throughout the day.

Q. 171. Do they change for every class? A. Yes, as your schedule goes they do it. Occasionally the schedule fixes it where students will be in the same room consecutively.

Q. 172. In the home rooms or any of the common areas of the school, are there any crucifixes displayed? A. In the rooms.

Q. 173. In every room? A. As far as I know.

Q. 174. In your classroom? A. Yes.

Q. 175. Are there any statues of a religious nature throughout the building? A. Yes, there are statues.

Q. 176. Where are they located, sir? A. Usually the statues are on like a piano or separate table one side of the room.

Q. 177. In the classroom? A. In the classroom.

Q. 178. In your classroom also? A. No, there are no statues in my classroom.

[10] Q. 179. Just the crucifix? A. The crucifix.

Q. 180. Any other religious symbols or pictures in your classroom? A. There are two paintings.

Q. 181. What sort of paintings, sir? A. One is of the Last Supper and the other is a Passion scene.

Q. 182. And are there similar paintings throughout the building? A. Yes.

Q. 183. In the other classrooms, too? A. Yes.

Q. 184. In the classroom where these other two lay teachers you have referred to teach? A. I believe so.

Q. 185. Now, for the courses that you teach the students come into your room; is that right? A. Yes.

Q. 186. Do you teach any courses to your home room? A. Yes, I teach science. I have some for French and a supervised study.

Q. 187. And students rotate and your students in your home [11] at some point leave and other students come in? A. Yes.

Q. 188. And in this room you teach them the subjects you are referring to; is that right? A. Yes.

Q. 189. At any time during the school year does the school student body and the faculty participate in any activities at the parish church? A. At the beginning of the year there was a Mass.

Q. 190. What would be the purpose for that? A. It is what we call Mass of the Holy Spirit. It is a prayer for guidance.

Q. 191. Is that in conjunction with the opening of the school year? A. Yes, it is normally followed.

Q. 192. Now, Mr. Bergeron, as far as you know is that customary at the beginning of each school year to have that Mass? A. It is customary.

Q. 193. At the church? A. Yes.

Q. 194. Does the entire school go over to participate? A. Yes.

Q. 195. Is your school in a separate building from the parish [12] church itself? A. Yes, it is in a separate building..

Q. 196. Is it adjacent to the church? A. Across the street.

Q. 197. Is it on the church property as far as you know? A. Yes.

Q. 198. And the name of the parish is on the outside of the building; is that right? A. Yes.

Q. 199. And is the name of the parish outside on the building? A. Yes.

Q. 200. Is there a crucifix or cross on the outside of the building? A. There is a statue.

Q. 201. Is that a religious statue? A. A religious statue of Saint Joseph.

Q. 202. And that Mass you referred to, do all of the students go with all of the teachers? A. Yes.

Q. 203. The nuns as well as the lay teachers? A. Yes.

Q. 204. Are there other occasions during the year when there is participation by the school at other services [13] or activities in the parish? A. There may be, depending on the liturgical season.

Q. 205. Have there been any other since you have been there since September? A. Not that I recall, no.

Q. 206. Do they have Mass, for example, on First Friday? A. They have the First Friday, but it is not in conjunction with the school. It is not in conjunction with the school exercises.

Q. 207. You can't recall any other occasions where the school has gone over? A. No.

Q. 208. Any other holidays or religious holidays that have been celebrated by the student body in the school? A. Well, celebrated, what do you mean by "celebrated?"

Mr. Shine: Well, participation in which the school participates or takes an active part.

The Witness: Not in a liturgical way, not for Mass or a ceremony.

Q. 209. Do they participate in the school itself in some fashion in a program of some sort?

Mr. Collins: Well, I object.

Mr. Shine: Let's back track a minute.

[14] Q. 210. You refer to the First Mass, the Mass in the fall when the school season began; is that right? A. Yes.

Q. 211. Then I asked you if there were any other occasions where the students and the faculty took part in any sort of services in the parish other than that? A. There are no parish services—well, there have not been since September for the school children in particular—well, depending if a major saint's day comes up, like Saint Patrick, or something, then some of the children in the classes will make posters or reports usually in the religion class.

Q. 212. Are there any other occasions where the parish has religious services in which the students participate? A. Well, not students of the school. Some belong to other organizations outside of the school.

Q. 213. Are there any occasions when, for example,

classes are suspended for a short time to allow students to participate in services? A. There have not been this year.

Q. 214. Were there at the parish where you worked last year any such services?

Mr. Collins: I object to that. That is irrelevant.

[15] Mr. Shine: You can answer the question.

The Witness: No, not during school time.

Q. 215. Before school or after school? A. After school they had First Friday services.

Q. 216. All of the students would go to the church for services? A. If they wished.

Q. 217. Is any religion other than Roman Catholicism taught in a formal fashion in your school? A. Not that I know of.

Q. 218. Who hired you, sir? A. I was hired after an interview with the principal by the pastor.

Q. 219. To whom did you originally apply? A. To the principal.

Q. 220. Did you have any dealings with the Catholic School Board? A. Dealings?

Q. 221. Did you apply to them in any fashion? A. Not for this job.

Q. 22. For other jobs? A. In finding out what work was available, I sent an application in to them to find out what schools required teachers.

Q. 223. You went to them originally for information as to a position and they told you about the availability of this position [16] presently? A. Not for this position, no. I heard from a friend who was teaching there.

Q. 224. Originally, did you go to them for the purpose of finding out what positions were available; is that right? A. Yes.

Q. 225. Have you ever known any teachers in the parochial schools who are divorced? A. No.

Q. 226. Have you known any teachers in the parochial schools who have been ex-communicated Catholics? A. No.

Q. 227. Is there a Catholic Teachers Institute, so-called, that is held for teachers such as yourself? A. Yes, there is.

Q. 228. Did you attend that last year? A. Yes, I did.

Q. 229. Have they held it this year? A. It was held the last calendar year, this school year, that's the one I attended.

Q. 230. In 1969, the fall, is that what you are referring to? A. Yes.

Q. 231. Where was that held? [17] A. At Mount Saint Charles.

Q. 232. And who attended that, if you know? A. The teachers from—I think it was Northern Rhode Island area, from the Catholic schools.

Q. 233. Were these nuns as well as lay teachers? A. Yes.

Q. 234. Including some lay teachers who taught only secular subjects, so-called? A. Oh, yes.

Q. 235. Do you know if the other teachers that you referred to as having applied for Salary Aid from your school attended? A. Yes.

Q. 236. How long a program is that, sir? A. It is a day-long program and it went on just one day this year.

Q. 237. Who runs the program, so to speak? A. The Diocesan School Board, I believe.

Q. 238. Father Mullen? A. Father Mullen was one of the principal speakers.

Q. 239. And are materials handed out, written materials, to teachers participating at the session? A. Yes, there were.

Q. 240. Of what nature, just generally describe it? [18] A. I believe there was a statement on the condition of the schools, how many teachers were available and how many pupils there were.

Q. 241. Did you receive any material on the Salary Supplement Law? A. I don't believe there was anything written down on it.

Q. 242. Was there any discussion of it. A. Honestly, I can't recall any formal discussion of it.

Q. 243. Are all of the faculty members in your school required to attend that institute? A. Yes.

Q. 244. Do you have a college degree, sir? A. Yes.

Q. 245. From where? A. From Providence College.

Q. 246. Do you personally as a teacher feel that the Catholic parochial schools perform an important function? A. A what function?

Mr. Shine: An important function.

The Witness: Yes.

Q. 247. Will you describe, in your own words, what that would be? A. The parochial school provides an opportunity for the children to receive religious instruction besides their normal secular instruction that is required for their [19] everyday living and puts them in closer contact with other Catholic children for sort of mutual development.

Q. 248. Does it put them in closer contact with the Catholic clergy than it would otherwise have if they did not attend the parochial school? A. As is stands now, yes.

Q. 249. Does it keep them in closer touch with their parish activities than they might otherwise be if they were to attend public schools? A. Yes. Normally, an announcement from the parish comes about activities and the children in school will hear it whereas they can't be sure that everyone who gets the parish bulletin reads it.

Q. 250. Without trying to be repetitive, what would you say would be the purpose as far as you understand it and the way you try to operate of the parochial schools? A. In the way I try to operate?

Mr. Shine: Yes.

The Witness: Well, in the way I operate it is simply a job of teaching science, French and reading. The principal advantages of the school are taken over by the nuns who teach the period of religion or who may get children together for various projects.

[20] Q. 251. Do you think the functions of the parochial school could be carried out as effectively if the children obtained this education in these courses you teach in the public schools and did not attend the parochial schools? A. You mean would they get as much secular education?

Q. 252. Do you think that the purposes of the school would be as effectively carried out if these children were obtaining their secular education in the public schools?

Mr. Collins: Objection.

Mr. Allen: Objection.

Mr. Shine: Would you answer the question if you understand it, please?

The Witness: I am afraid I don't quite understand.

Mr. Collins: Do you mean if they attended the public schools would they still have as much training or exercise of their religion, do you mean that?

Mr. Shine: That is what I mean.

The Witness: That is what you mean?

Mr. Shine: Yes.

The Witness: Okay, so I don't believe myself that many of the children would get the religious education attending a public school separately and then [21] having to go someplace else for their own religious training. I think it is a matter of convenience mainly.

Q. 253. It makes it easier for the religion to be taught because the students are already in the parochial school; is that what you are saying? A. Yes.

Mr. Shine: That is all.

Examination by Mr. Collins

Q. 254. Do you inject religion into the courses you teach? A. No, I don't inject it, no.

Q. 255. Do you teach them any differently than you taught when you were teaching in public schools? A. No.

Q. 256. What was your salary last year? A. It was based on $5400 a year.

Mr. Collins: I have nothing further.

Examination by Mr. Shine

Q. 257. Do you know what Salary Supplement you would be eligible for this year if it is paid to you? A. I believe it would be $900, which is 15 per cent of the $6000.

Mr. Shine: That is all. Do you have anything?

[22] Mr. Allen: I am reflecting.

Mr. Shine: Excuse me.

Mr. Allen: No, I have no questions.

Plaintiffs' Exhibit No. 17

[Deposition of Rev. Christian E. Guilbeault, Pastor of St. Matthew's Church, Central Falls, Rhode Island]

* * * * * * * * * * *

[1] REVEREND CHRISTIAN E. GUILBEAULT,

first having been duly sworn, testified as follows:

Examination by Mr. Shine

Q.1. What is your full name, sir? A. Reverend Christian E. Guilbeault, G-U-I-L-B-E-A-U-L-T.

Q.2. Where do you reside, sir? A. 1030 Dexter Street, Central Falls.

Q.3. And are you a priest of the Catholic Church? A. I am pastor of Saint Matthew's Church.

Q.4. Where is that located? A. In Central Falls.

Q.5. How long have you been a pastor, sir? A. In Central Falls since 1965.

Q.6. And before that? A. I was pastor of Saint Agatha's for five years, Saint Agatha's in Woonsocket.

Q.7. Now, does Saint Matthew's have a parish elementary school? A. Yes.

Q.8. And what is the name of the school, sir? A. Saint Matthew's School.

Q.9. Where is the school carried on, where is this school conducted? [2] A. On the parish property, if that's what you mean.

Q.10. Is it a separate building from the church building itself? A. Yes.

Q.11. Is it connected to the church building? A. No, not at all.

Q.12. But it is on the parish land; is that right? A. Yes.

Q.13. Would you tell us approximately how many students are in the parish school? A. About 496.

Q.14. And is there a principal there? A. There is.

Q.15. Who is the principal? A. Sister Simonne Daigneault, a Sister of Saint Ann.

Q.16. How many people are on the faculty? A. Counting everyone, 18. By "faculty," I suppose you mean the librarian is included and the superior or do you mean just the teachers?

Mr. Shine: Everyone you would consider as being on the faculty of the school.

The Witness: Eighteen.

Q.17. Are any of those faculty members laymen? [3] A. Four of them.

Q.18. And the other 14 are— A. Religious sisters.

Q.19. They are nuns, are they? A. Yes.

Q.20. Now, who selects the principal of the school? A. Right now it is selected by the Provincial, the Provincial in Marlboro. I don't remember her name. She was appointed just a couple of months back.

Q.21. What is the Provincial? A. The Provincial is the head of the order in a certain region. In all of New England she would be the head of the order. She appoints the sisters to different schools. She appoints the principal.

Q.22. Does that order engage and appoint all of the sisters for teaching in your school? A. Yes.

Q.23. And who engages the lay teachers? A. The pastor.

Q.24. And do they come directly to you with respect to a job or are they referred to you? A. Both ways. When you are looking for a lay teacher [4] you try to find one personally alone or you get help from the school board or friends.

Q.25. What school board are you referring to? A. The Catholic School Board of the Diocese of Providence.

Q.26. Does the Catholic School Board have to approve all lay teachers you wish to hire? A. They are supposed to. There are guidelines we have to follow.

Q.27. But they are supposed to approve lay teachers; is that right? A. Yes.

Q.28. Now, how are the operations of the school financed? A. Mainly through subsidy from the parish. There is a

nominal fee for the pupils and the deficit is made up by the parish.

Q.29. The parish has its own independent income; is that right? A. Yes.

Q.30. And how does it handle the financing of the school, does it provide an allocation each year for the running of the school or are the school finances considered part and parcel of the finances of the parish? [5] A. Right now the second explanation is the right one.

Q.31. Which is that? A. That we have the school going on as an activity of the parish and, therefore, if they can't meet their obligation, and we know they will not, the parish is responsible.

Q.32. As a practical matter, for example, when bills come in for supplies or books or materials, do they come into the parish or to the school? A. Well, the parish will give the school every month a certain amount and there is a treasurer at the school who pays from the checkbook made out to Saint Matthew's School, so the bills may come to one or the other. They come to the school or to the parish.

Q.33. But substantially all of the bills are paid out of parish funds; is that right? A. Yes.

Q.34. Now, do any of the nuns have contracts of employment? A. Not now.

Q.35. Did they ever? [6] A. No, but there was talk of it for the future It is an understanding and it always has been an understanding between the Provincial and the parish that nuns are sent there. It is for the year, if not more.

Q.36. Do the lay teachers have contracts? A. Yes.

Q.37. And is it a form contract that is recommended to each parish or do you enter— A. Yes, well, it is a form contract. It is a form we have that we fill out.

Q.38. Are the contracts essentially the same terms, except varying, for example, with respect to salary, are they the same terms? A. Yes. I don't know what other terms you are implying. The contract is a financial affair.

Q.39. For example, do they all run for the same term? A. Yes, for a year.

Mr. Shine: For a year.

Q.40. And I assume the salaries vary from individual to individual; is that right? A. Yes.

Q.41. Who determines what salary will be paid to a lay [7] teacher? A. Right now the pastor is doing it in accord with the person asking for a position.

Q.42. Are there any guidelines from the Catholic School Board on that? A. Yes.

Q. 43. What type of guidelines? A. There is a minimum that is suggested for those who have degrees and then there is supposed to be an addition every year to that salary, to that minimum.

Q.44. In other words, is it fair to say these are recommended scales? A. Yes.

Q.45. By the Catholic School Board? A. Yes, that's right.

Q.46. Are those the salaries that you engage lay teachers on? A. This year, yes.

Q.47. Are there any lay teachers in your school who have, to your knowledge, applied for and been accepted for the Salary Supplement Aid?

Mr. Collins: If he knows.

Mr. Shine: I said, "To your knowledge."

[8] The Witness: I think there is only one who is certified and I couldn't say whether he has applied.

Q.48. Would that be Mr. Crane? A. Yes.

Q.49. What is Mr. Crane's first name? A. Maurice.

Q.50. Now, did certain material come to your attention from the Rhode Island Department of Education with respect to information they requested in connection with the Salary Aid Program, did you fill out any questionnaires or any materials in connection with the program? A. I don't recall.

Q.51. Do you know if anybody else at the parish did? A. I don't think they would have done it without my knowledge.

Q.52. Were there, for example, requests for financial information as to the operations of the school that came to your attention? A. No.

Q.53. Do you know if anyone at the school filled out any such questionnaires? [9] A. I don't recall. As I say, they would have mentioned it to me. I'd be the superior and they would have mentioned it to me and I don't recall.

Q.54. On your contracts with lay teachers, how are the salaries paid, are they all generally paid on the same basis throughout the year? A. Some are paid on a 12 month, 52-week basis, and others on the 10-month basis.

Q.55. Is that an option of the teacher? A. Yes, we leave it to them.

Q.56. Now, are the payments made for the salary on a monthly basis? A. Well, two of them on a monthly basis and two of them bi-monthly or twice a month.

Q.57. And the bi-monthly or monthly payments, as the case may be, are those calculated on the basis of the gross salary that the contracts provide for? A. Yes.

Q.58. Now, with respect to Mr. Crane, for the moment assume that Mr. Crane has been qualified because in a previous deposition at the Department of Education [10] they listed him as being qualified under the Salary Supplement Aid, has he been getting his salary based upon the gross figure in his contract? A. Yes.

Q.59. If a Salary Aid payment were to be made to him, who would get that? A. He would get it, but it is understood—it would mean that the salary that is paid by the parish would be that less.

Q.60. In other words, some the payments, monthly or bi-monthly payments to him after the receipt of the Salary Supplement, would not be made to the extent— A. Some of the burden would be taken off our shoulders.

Q.61. Off of the parish's shoulders? A. Yes.

Q.62. His contract is with the parish, I take it; is that right? A. Yes, but when these contracts are signed they are done in a triplicate form and he gets one and we keep one and the Board of Education gets one.

Q.63. Who signs on behalf of the employer, is it the principal? A. The pastor.

[11] Q.64. It is the pastor? A. Yes.

Q.65. Does anyone from the School Department, in addition, sign or approve these contracts? A. Not up to now.

Q.66. Do you have any reason to believe that that is going to change? A. It seems to me I read some suggestion that contracts might be signed at the office—the Central Falls office.

Q.67. Would that be the Superintendent of Diocesan Schools office? A. Yes.

Q.68. So that has not been the practice? A. No.

Q.69. But you understand it might be? A. I heard or I read something.

Q.70. Is it fair to say that if the Supplement payments were made that the financial responsibility of the parish would be lessened by the extent of any salary? A. Most fair.

Q.71. That is an accurate statement? A. Oh, absolutely.

[12] Q.72. And that would presumably make equal amount of money available for other parish activities; is that correct?

Mr. Collins: I object to that. That is an argument. I do not think that he is qualified to answer that. He has testified that he has a contract with the teacher.

Q.73. Well, let us take the case of—supposing Mr. Crane did receive, let's say, $500 salary Supplement, that would be that much less that the parish would have to pay him; is that correct? A. It would be that much less that the parish would pay him, but it would mean that we have that much more money to invest in the school.

Q.74. And for other parish activities? A. No.

Mr. Collins: I object.

Q.75. Wouldn't that money also be available for other parish activities?

Mr. Collins: He just answered that. He said that he would have that much more to invest in the school.

Mr. Shine: I heard his answer. I am [13] asking him a further question. I think I am entitled to an answer.

Q.76. Now, I understand your answer, sir, and my question is: would that not also mean that the parish by having to pay $500 less would have that amount of money for other parish activities, whether it be the school or whether it be any other aspect of the parish activities, wouldn't it be up to you to decide as to where the money would be spent?

Mr. Collins: I object to that. He said he would have that much more to put in the school. That is the answer he has given you.

Mr. Shine: I would ask that the question that I have just asked be answered. This gentleman need not be protected to the extent that answers have to be told to him.

Mr. Collins: I object to that, Mr. Shine. He has given you an answer. I repeated that answer to you. If you don't like the answer, I don't think that you have to go back and back at this man to get an answer that you might like.

Mr. Shine: I am asking the question to which there has been no answer.

[14] The Witness: Do you want me to answer?

Mr. Collins: I can't tell you not to answer. You go ahead, if you can.

The Witness: What is the question again?

(Whereupon pending question was read by the reporter)

The Witness: I would repeat what I said a little while ago. We want to better the school and, therefore, if we had an extra amount of money we certainly would put it in the school.

Q.77. Would it not be your decision to decide where such parish funds would be spent for parish purposes? A. Yes.

Q.78. That would be your decision? A. Of course.

Q.And, as you say now, you would like to put such funds into the school, but that would be something you would have to decide at the particular time; is that correct?

Mr. Collins: I object to that. That is not a fair restatement of the testimony and, moreover, you are not cross-examining this man. You called [15] him as a witness and so I object to the form of the question.

Q.80. Wouldn't the choice of where such monies that would be saved be spent, wouldn't that be up to you, sir? A. The spending of money in a parish is up to the pastor in general.

Q.81. So you could use them for school purposes or for non-school purposes, depending on your choice at the time; is that correct?

Mr. Collins: I object to that. I think you are trying to lead this witness down a path and I do not think it is appropriate. He has testified if he had the extra money he would put it to the school. You keep trying to say that maybe he would spend it some other place.

Q.82. Is it possible for you to spend it some other place? A. Is it possible?

Mr. Shine: That is all I am asking.

The Witness: I have to say it is possible.

Q.83. If there were a pressing need at the moment in the parish, other than in the school, is it not possible such funds would be used for that pressing need?

[16] Mr. Allen: Objection. Speculative.

Mr. Collins: I object. It is leading.

Q.84. Is that not possible, sir?

Mr. Collins: Objection. The man testified and he tried to tell you what he does or would do. We are not concerned with possibilities and I do not think he is.

Mr. Shine: Would you answer the question, sir?

The Witness: Repeat that question.

(Whereupon pending question was read by the reporter)

Mr. Allen: My objection is not waived.

Mr. Shine: Would you answer the question, sir? The gentlemen have made objections on the record to protect their interest and I would ask that you answer the question, sir.

Mr. Collins: Also to protect yours because we do not want you to have the benefit of an answer if your question is proper.

The Witness: You are asking is it [17] possible.

Q.85. What I am saying is: is there any certainty that funds that would be saved by the parish as a result of this Salary Supplement Bill, is there any certainty that those funds would definitely go into the school?

Mr. Collins: I object to the form of the question.

Mr. Shine: You may answer. Is there any such certainty?

The Witness: Any such certainty? I think I told you awhile ago, and I would repeat, that whatever we save would permit us to better the conditions in the school which it would certainly would go back to the school. We have a certain budget to run the parish. We have a certain budget to run the school. Now, if our budget to run the school, instead of being spent fully on salaries, gave us a certain amount, $500 or more, certainly that would go into the school because there is always betterment possible in a school building.

Q.86. The decision as to where such savings would go in the parish would at any time be up to the pastor; [18] is that correct?

Mr. Allen: Objection. You may answer. It is repetitive. However, you may answer.

Mr. Shine: Is that correct?

Mr. Collins: He has already answered the question. He said, "Yes."

Q.87. Is that your answer, sir? A. Yes, the spending of money is up to the pastor.

Q.88. What sort of expenses does the parish have other than the school operations?

Mr. Allen: I object. It is a fishing expedition.

Mr. Shine: This is a discovery procedure, Mr. Allen.

Mr. Allen: I thought we were intending to use this—if

that is your characterization of it, I withdraw my objection.

The Witness: What is the question again?

(Whereupon pending question was read by the reporter)

The Witness: Well, the running of a parish, the maintenance of a parish, the repairs of [19] parish buildings.

Q.89. Maintenance of the church building, for example? A. The church, the rectory, the convent.

Q.90. Do you from time to time go into the parish school during the course of the school year? A. Yes.

Q.91. Is this done on a regular basis or irregular basis? A. As far as I am concerned, an irregular basis because there is a curate appointed who is guidance counsellor in the school and, therefore, he has nearly daily contact with the school.

Q.92. There is a curate appointed, you say? A. Yes.

Q.93. Who appoints the curate? A. The pastor.

Q.94. And you have a curate in the school, your school; is that right? A. Yes.

Q.95. Is the curate a lay person? A. A priest.

Mr. Shine: A priest.

Q.96. Is he a priest of the parish? A. Yes.

[20] Q.97. And is he an assistant or someone under your control? A. He is the assistant, yes. The curate is assistant to the pastor.

Q.98. He is the assistant pastor? A. Yes.

Q.99. Does he have responsibilities with respect to the parish school? A. None other than—well, as I say, he is more or less of a guidance counsellor. He will teach religion classes.

Q.100. Is he in the school on a regular basis? A. Regular.

Q.101. For classes for example? A. Yes, I would say regular.

Q.102. And how often do you go into the school? A. It is not on a regular basis so I can't say. I might go a couple of times a month.

Q.103. Now, in recent years has your parish school had problems in providing competitive salaries for lay teachers

for the school? A. Has it had problems? I would have to answer yes.

Q.104. And the problems are in terms of insufficient funds [21] in the parish to pay such lay teachers? A. Yes.

Q.105. And would this problem not be alleviated as a result of the Salary Supplement payments that would be made? A. Certainly.

Q.106. Now, are all of the students in the parish school children of parents of the parish? A. No.

Q.107. How many of them are not, sir, do you know? A. Maybe 25 or 30 are from outside the parish.

Q.108. Are they all Catholics also? A. No.

Q.109. How many non-Catholics in this school, sir? A. I couldn't tell you. It is not a great number of non-Catholics. Maybe—

Mr. Collins: If you do not know, Father, don't guess.

Q.110. Less than 25, is it? A. Yes.

Q.111. How many students do you have in your school? A. Four hundred ninety-five-ninety-six.

Q.112. Is there a preference given to admitting parish [22] students into the parish school if space is short? A. Certainly.

Q.113. And is there a preference given within a parish if a space is short to children of wealthier parishioners? A. No.

Q.114. Is there any guideline from the Diocese along these lines? A. I couldn't say if there is any guideline from the Diocese. It has always been the practice, I think, in every parochial school not to use as a basis for admission the wealth or poverty of a person if he needs it and if we can take him in we do.

Q.115. Are you familiar with the Diocesan Handbook for Schools, sir? A. I have read it sometime ago.

Q.116. Do you know if there is any regulation or policy in that handbook which controls the parish schools along the lines of giving preference to wealthier parishioners? A. I do not, no, but I do not think there would be anything like that.

Q.117. If space is limited, is there a preference given to non-parish Catholics as opposed to non-Catholics?

Mr. Collins: By that, do you mean [23] non-Catholics in the geographical boundaries of the parish?

Mr. Shine: Let me ask the question again.

Q.118. You said before that with respect to parish and non-parish students, parish students get a preference; is that right, if there is a shortage of space; is that right? A. Yes.

Q.119. And if there are limitations of space, who gets the preference, sir, Catholics who are outside of the parish or non-Catholics? A. In that case I think it would be first come, first served, the first one to apply.

Q.120. Now, are you familiar generally with the conduct of the parish school, the operations of the parish school? A. In general, yes.

Q.121. You are generally familiar with the courses that are taught in the parish school? A. In general, yes.

Q.122. Is a teacher allowed to teach anything that is contrary to Catholic religious doctrine in the parish [24] school?

Mr. Collins: Wait a minute. I object to that. I don't know what you mean by that.

Mr. Shine: You do not understand the question, sir?

Mr. Collins: Well, I think I am entitled to understand it also, Mr. Shine. I object to it as being not understandable. By that do you mean the religion courses or mathematics course?

Mr. Shine: Any course.

The Witness: Could you give an example? I can't in an elementary school think of anything.

Q.123. Well, would a teacher in the parish school be allowed to teach in any subject at any time of the day any matter that is contrary to the Catholic religious doctrine?

Mr. Collins: I register the same objection. Father asked you if you would help him by giving him an example.

The Witness: In a grammar school they are teaching history and they are teaching science, they are teaching

mathematics and they are [25] teaching languages and literature. I don't see what could a teacher want to teach in a elementary school that would be contrary to Catholic teaching.

Q.124. Suppose they wanted to teach something you were against? A. Murder?

Q.125. Did you say "murder?" A. Yes.

Q.126. That would be against Catholic doctrine; is that right?

Mr. Collins: What course, Mr. Shine, in a grammar school would be attempting or entitled to teach that murder is good or bad?

Mr. Shine: I am asking you, Father, if there were any such instructions in the school, would that be allowed?

Mr. Allen: I register an objection.

Mr. Shine: You can answer the question.

The Witness: I would have to say no.

Q.127. Is there any religion taught in the parish school [26] other than Catholic religion in a formal fashion?

Mr. Allen: Could I have that question read?

(Whereupon pending question was read by the reporter)

Mr. Collins: I will stipulate Mr. Shine, that in his parochial school and any others that instruction in the religion course is Roman Catholic.

Mr. Shine: And will you stipulate that no other religion is allowed to be taught?

Mr. Collins: In the instruction?

Mr. Shine: In the parish schools?

Mr. Collins: How do you mean "allowed to be taught?" Do you mean by instruction?

Mr. Shine: In any manner whatsoever.

Mr. Collins: I can't stipulate to that.

The Witness: I think I can answer part of that question.

Mr. Shine: Go ahead, sir.

The Witness: The period dedicated to religion, of course, during that period it is the [27] Catholic religion that is

taught, but in history courses, for example, most certainly the youngsters are taught about other religions, if that is what you mean.

Q.128. There is no other formal religion taught other than Catholic? A. No.

Q.129. And would a teacher be allowed to teach in a formal manner any religion other than Catholic? A. No.

Q.130. Now, will the parish engage any teachers who have remarried after a civil divorce?

Mr. Allen: I object to it on the ground of relevance and pertinence.

The Witness: Certainly we'd look for other teachers, to begin with.

Q.131. And why would you look for other teachers? A. Because the teacher is supposed to be a witness to his beliefs and we expect the teacher to be a Catholic teacher or at least to live up to certain norms, certain ideals and the one you describe would not be our idea of a teacher.

Q.132. Would those same standards apply to lay teachers, [28] that is what we are talking about? A. Well, right now they apply only to lay teachers.

Q.133. Would they apply to lay teachers who teach math, do they also apply to lay teachers who would teach courses such as math and science and music?

Mr. Collins: Are you talking with reference to this man's preference?

Mr. Shine: I am only talking about you, sir, your situation and what you know.

The Witness: I certainly would try to find a teacher with the personal credentials.

Q.134. Even with respect to a teacher of so-called secular subjects? A. Yes.

Q.135. Now, are the reasons you would take that position based upon policies of the Diocesan schools?

Mr. Collins: I object to that. I do not think this man would know that.

Mr. Shine: If you know.

The Witness: My personal opinion?

Mr. Shine: Based upon your position as a priest, sir.

The Witness: Yes.

[29] Q.136. And your Catholic training? A. Yes.

Q.137. And your religious beliefs? A. My convictions.

Q.138. Would an ex-communicated Catholic be allowed to teach in the school?

Mr. Collins: In his particular school?

The Witness: No.

Mr. Shine: I am sorry but I did not hear your answer.

The Witness: No.

Q.139. Do you think they would be allowed to teach in any other parochial schools as far as you know?

Mr. Collins: I object to that, Mr. Shine, as to what he might think. We are not interested as to what his speculations are with respect to other schools and you just said you only wanted to know what he knows.

Mr. Shine: If you know, do you know?

The Witness: As far as I know, the same answer.

[30] Q.140. They would not be allowed to? A. No.

Q.141. Have you been connected with other parish schools other than the present one? A. No other parish school, no.

Q.142. You have been in other parishes; is that right? A. Yes, I was in another parish, but there we were starting out our building from zero, so we had the church.

Q.143. What is Synodal law? A. Synodal law, law according to the Synod. That means the Synod of the Diocese of Providence.

Q.144. Of what is that made up, what constitutes it? A. The Synod?

Mr. Shine: Yes.

The Witness: The Synod is a grouping of all of the priests of the Diocese called for by the Bishop to go over the general law of the church and apply it to a particular region.

Q.145. Who enunciates the Synodal law? A. The Bishop.

Q.146. Of what effect does that have on the operations, for example, of a parish and a parish school? [31] A. These are the guidelines that we should follow.

Q.147. So they have a binding effect upon the pastor and the church and the parish and the parish school?

Mr. Collins: When you say "binding," what do you mean by binding?

Mr. Shine: I am asking the Father. I am asking him what it means.

Mr. Collins: I know, but "binding" is a word that has a theological meaning and it has a philosophical meaning or it may mean just what a particular person thinks.

Mr. Shine: I would like to ask the Father what do you feel the effect is.

The Witness: In the Synod we are given guidelines. At times we will be told that this is strictly observed and that means there is a strict obligation there and so there is a definite level, you might say, in the guidelines.

Mr. Shine: Had you finished your answer?

The Witness: Yes.

Q.148. Who is the chief executive officer, so to speak, if we could use that phrase, in the parish; is that the [32] pastor? A. The pastor.

Q.149. And, as such, are you fully responsible for and do you have control over the parish school operation? A. Officially, yes, although you, according to what they call the principle of sub-superiority, if you have a superior appointed to the school you let her take care of school matters.

Q.150. Do representatives of the Diocese attend the school from time to time and visit the school? A. Yes, there are representatives who come.

Q.151. Are these priests, sir? A. The last one was a sister, I think.

Q.152. Either priests or sisters? A. Yes.

Q.153. Do they make formal periodic visits through the school? A. Yes.

Q.154. Do they sit in on any of the classes? A. I think so.

Q.155. Do they sit in on all of the classes to observe them? A. I couldn't say if they go to all of the classrooms. [33] I know they go to some of them.

Q.156. Do you know if they only go to the religion class or do they go to others? A. Everything, the entire curriculum.

Q.157. They make sample observations, do they? A. The complete curriculum of the school is examined.

Q.158. That includes the so-called secular subjects such as math and music? A. Oh, yes.

Q.159. And they observe those classes, too, in their official capacity? A. Yes.

Q.160. Do you confer from time to time with the principal of the school? A. Yes.

Q.161. With regard to the operations of the school? A. Yes.

Q.162. Do you consider that the lay teachers in the school are an integral of the Catholic educational structure in that school?

Mr. Allen: I object. I mean, I do not understand what the thrust of this question is. They are on the same payroll and apparently [34] they are in the same building. What is the thrust of the question? I think the question needs a good deal more precision.

Mr. Shine: Do you understand the question, sir?

The Witness: Yes.

Mr. Shine: Could you answer it?

The Witness: Certainly.

Q.163. The answer is "certainly?" A. Yes.

Q.164. Does that include lay teachers who teach so-called secular subjects as well as other lay teachers? A. Yes.

Q.165. Why is that so?

Mr. Collins: Why is what so? I will stipulate they are all part of the school system.

The Witness: They are considered as an integral part.

Q.166. Of the Catholic Educational Structure, is that what you said? A. To make them feel at home and to bring out the full cooperation so that they are not considered as [35] outsiders. They are members of the faculty.

Q.167. I would ask you this, sir: during the school year,

sir, are operations of the school from time to time stopped for the students to attend Mass in the church? A. Are they stopped?

Q.168. Well, I say, sir, are classes adjourned for purposes of students to attend Mass? A. Usually when we have it we try to integrate it in the program so it will be either at the end of the morning or at the beginning so as it will not interfere with the classes.

Q.169. All of the students go to church for Mass? A. Once in awhile, yes.

Q.170. And an adjustment is made in the program for the day to accommodate the students going to the church for Mass; is that fair?

Mr. Collins: No, I do not think it is fair.

Mr. Shine: I am asking you—

Mr. Collins: Wait a minute, Mr. Shine. You served us with 12 notices for depositions. We tried to work things out and we tried to [36] accommodate you and we tried to make arrangements for this man to be here and now you are engaging in a cross-examination of this man. He said that they tried to accommodate and tried to put the Mass at the beginning of the day or the end of the day so as not to disrupt classes. Now you are saying you want him to say the reverse.

Q.171. You said that sometimes the children go to Mass at the end of the morning session; is that right? A. Yes.

Q.172. Instead of remaining in the school; is that right, where they ordinarily would be? A. The way it is done is that the last period of the morning would be curtailed and this would be part of their religious education for the day.

Q.173. Are all of the students required to attend such a program? A. Well, everyone is invited.

Q.174. Do all, in fact, attend?

Mr. Collins: He would like to think so.

The Witness: Most of them.

Q.175. Do all of the teachers attend? [37] A. Yes, they are glad to do so.

Q.176. All of the lay teachers attend? A. I have never checked on them. I have seen some of them at least.

Q.177. Do you expect that all of the lay teachers will attend? A. No. You can expect them. It is free. It is up to them if they want to come.

Q.178. What happens if a sister or a member of the clergy in the parish passes away, is the school program affected? A. No, it is not, just to try to find another one, that's all.

Q.179. Is the school closed, for example, out of respect? A. On the day of the funeral, of course.

Q.180. The school itself is closed? A. Well, if it is the priest in the parish everything is closed in the city. If it is a sister, well, probably the funeral might take place at the Mother House in Worcester, but we would have some religious Mass, for example, probably on Saturday, to make sure that more people are free to come.

Q.181. But, if it is the pastor, for example, the school would [38] be closed for the funeral; is that correct? A. That is one of his privileges.

Q.182. In such an unfortunate situation, is the school student body and the faculty expected to attend the funeral as a body out of respect?

Mr. Allen: Note my objection.

The Witness: Not as a body.

Q.183. Is there a mission program that is taught in the school? A. A mission program?

Mr. Shine: Yes.

The Witness: What do you mean by "mission program?"

Q.184. Well, is there such a thing as a mission program?

Mr. Collins: He has asked you what you mean.

Q.185. Is there any such thing as a mission program that you know of? A. What do you mean by "mission?"

Q.186. You don't know what a mission program is? A. I could explain it in a few ways, I suppose, but is there a mission program in the school? Do you mean a missionary

program by which the youngsters [39] are made aware of a missionary and what the meaning of the word "missionary" is at home and abroad; is that what you mean?

Mr. Shine: Yes.

The Witness: In that sense, there is a missionary movement program which means much more. There is a missionary spirit.

Q.187. How many times are Catholic prayers said in a formal fashion during the course of the day in the parish school?

Mr. Collins: If he knows.

The Witness: If it is the way I did, it would be the beginning and the end.

Q.188. What courses does Mr. Crane teach, do you know? A. I know he has a course in sociology.

Q.189. Does he have a home room, so-called? A. No, it is departmentalized. I think he teaches sociology to different groups.

Q.190. Does each teacher on your faculty have a home room, so-called, that he works out of? A. No.

Q.191. Are there such things as home rooms? A. A few in the lower grades, I think.

[40] Q.192. Do your students come in the morning and go to one particular classroom? A. In the lower grades.

Q.193. And the others do not? A. Well, from what I know, from the fourth grade up a number of subjects are departmentalized.

Q.194. Does every student stay all day through the day in his home room? A. No.

Q.195. Some of them move around? A. Yes, some subjects are taught to a group, two or three classrooms at the same time. This would be, therefore, down in the school hall.

Q.196. Mr. Crane has no responsibility for taking care of a separate class of students? A. He must start the day in a certain classroom, I suppose.

Mr. Shine: That is what I am asking.

Q.197. And does he supervise the saying of prayers in that classroom? A. If he is there at the beginning of the day he would.

Q.198. Well, if he does have that classroom, is that his [41] responsibility? A. Well, I suppose, as I say, I don't know if he has a particular classroom.

Q.199. Who would know? A. The superior.

Q.200. By "superior," you mean the principal of the school? A. The principal of the school, yes.

Mr. Shine: I have no further questions.

Mr. Collins: No questions.

Mr. Allen: I have no questions.

Examination by Mr. Collins

Q.201. Last year, Father, what did you pay the lay Teachers? A. Do you mean the 68-69 or 69-70 year?

Mr. Collins: 68-69.

The Witness: About $23,000.

Q.202. Well, are you paying the lay teachers more this year than you did last year? A. Yes.

Mr. Collins: That's all I have.

Examination by Mr. Shine

Q.203. You say you are paying more for lay teachers this year than last year? [42] A. There was a slight rise in their salaries.

Q.204. Is that rise in the salaries equal to the Salary Supplement that they would obtain? A. No.

Q.205. Is it more or less? A. Less.

Mr. Shine: All right.

Plaintiffs' Exhibit No. 18

[Contract of Sister Mary Virginia Kelly with St. Thomas' School]

ST. THOMAS PARISH

TEACHER CONTRACT

I, Sister M. Virginia Kelly, R.S.M. No. & Street .... City or Town Providence do hereby accept an appointment as a Probationary Teacher in St. Thomas School, for the period of two years provided I meet all the requirements of the Catholic School System.

Date: 6/17/69

/s/ Sister M. Virginia Kelly, R.S.M.
Signature of Applicant

I, Louis W. Dunn, the pastor or administrator of said parish do hereby agree to employ Sister M. Virginia Kelly, RSM, of Providence as a teacher in St. Thomas, City or Town Name of School for the academic year 1969-1970, at the salary of $7,000 a year

Date: June 18, 1969

/s/ Louis W. Dunn
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island —02903)

Plaintiffs' Exhibit No. 19

[Contract of Appellant Ralph F. McElroy with Ss. John and Paul School]

SS JOHN & PAUL PARISH

TEACHER CONTRACT

I, Ralph F. McElroy No. & Street William F. Angell Lane City or Town N. Scituate, R. I. do hereby accept an appointment as a Probationary Teacher in SS John & Paul School, for the period of Sept. 1969—June 1970 provided I meet all the requirements of the Catholic School System.

Date: Sept. 2, 1969

/s/ Ralph F. McElroy, Jr.
Signature of Applicant

I, John V. Doyle, the pastor or administrator of said parish do hereby agree to employ Ralph F. McElroy, of William F. Angell Lane N. Scituate, R. I. as a teacher
City or Town
in SS John & Paul, for the academic year 1969-1970, at
Name of School
the salary of $6400.00

Date: Sept. 2, 1969

/s/ John V. Doyle
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island—02903)

Plaintiffs' Exhibit No. 20

[Contract of William L. Bergeron with St. Joseph's School]

ST. JOSEPH PARISH

TEACHER CONTRACT

I, William L. Bergeron No. & Street 17 Phoenix St. City or Town Central Falls, R. I. 02863 do hereby accept an appointment as a Probationary Teacher in St. Joseph School, for the period of Sept. '69-June '70 provided I meet all the requirements of the Catholic School System.

Date: Sept. 2, 1969

/s/ William L. Bergeron
Signature of Applicant

I, Wm. J. Beane, the pastor or administrator of said parish do hereby agree to employ William L. Bergeron, of Central Falls, R. I. as a teacher in St. Joseph, for
City or Town Name of School
the academic year 1969-1970, at the salary of $5,100.00

Date: Sept. 1, 1969

/s/ William J. Beane
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island —02903)

Plaintiffs' Exhibit No. 21

[Contract of Appellant William A. Hanson with Msgr. Matthew F. Clarke School]

MSGR. MATTHEW F. CLARKE PARISH

TEACHER CONTRACT

I, William A. Hanson No. & Street 113 North River Drive City or Town Narragansett, R. I. do hereby accept an appointment as a Probationary Teacher in Msgr. Clarke School, for the period of 1969-1970 provided I meet all the requirements of the Catholic School System.

Date: May 30, 1969

/s/ William A. Hanson
Signature of Applicant

I, Rev. James J. Cassidy, the pastor or administrator of said parish do hereby agree to employ William A. Hanson, of 113 North River Drive Narragansett, R. I. as a City or Town teacher in Msgr. Clarke, for the academic year 1969-Name of School 1970, at the salary of $6000.00

Date: May 30, 1969

/s/ James J. Cassidy
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island –02903)

Plaintiffs' Exhibit No. 22

[Contract of Appellant Alan E. Moss
with St. Brendan's School]

ST. BRENDAN PARISH

TEACHER CONTRACT

I, Alan Moss No. & Street 78 Congress Street City or Town Fall River do hereby accept an appointment zip as a Probationary Teacher in St. Brendan School, for the period of one year provided I meet all the requirements of the Catholic School System.

Date: May 1969

/s/ Alan E. Moss
Signature of Applicant

I, Msgr. Kenny, the pastor or administrator of said parish do hereby agree to employ Alan Moss, of 78 Congress Street Fall River as a teacher in St. Brendan, for the City or Town Name of School academic year 1969-1970, at the salary of $6000.00 ($5100.00 payable by Msgr. Kenny; $900.00 supplement paid by the State semi-annually)

Date: May 1969

/s/ John J. Kenny
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island —02903)

Plaintiffs' Exhibit No. 23

[Contract of Appellant Phyllis A. Walter
Blessed Sacrament School]

BLESSED SACRAMENT PARISH

TEACHER CONTRACT

Made in Providence, Rhode Island on the third day of September, 1969 between Msgr. McKitchen pastor of Blessed Sacrament Church (hereinafter called the first party) and Phyllis A. Walter residing at 58 Chapman Street, Providence, R. I. (hereafter called the second Party.)

WITNESSETH

1. The first party hereby employs the second party and the second party agrees to work for the first party as a teacher in the Blessed Sacrament School.

2. It is agreed that if the work of the second party is not being performed with professional dignity and diligence and in a manner satisfactory to the first party, then in such event, the first party shall have the right at any time during the period of this agreement to discharge the second party upon the payment to him (her) of one month's salary and upon such discharge and payment, the first party shall be released from all further obligations or liabilities hereunder.

3. It is agreed that the basic salary received will be $6000 per year—of which the first party will pay $5100 and the State of Rhode Island $900

4. The first party shall pay to the second party the sum of $5100 in sixteen payments on a semi-monthly basis at the rate of $300 per payment on the first and fifteenth day of each month, beginning on the 3rd day of September, 1969 and ending on the 19th day of June, 1970. In

addition, the first party will make two other payments to the second party, one in February and one in June of $150 each.

In the event that a legal holiday should fall on the first or fifteenth day of a month, the payment date shall be one day later, viz., the second or the sixteenth day of that month.

The terms of this agreement shall begin on the 3rd day of September, 1969 and terminate on the 19th day of June, 1970.

In witness, the parties have here set their hands and seals on the 3rd day of September, 1969.

/s/ Wm. D. McKitchen
Pastor

/s/ Phyllis A. Walter
Teacher

Plaintiffs' Exhibit No. 24

[Contract of Appellant Madelyn C. Law with St. Timothy's School]

ST. TIMOTHY PARISH

TEACHER CONTRACT

I, Madelyn C. Law No. & Street 45 Shenandoah Road City or Town Warwick zip do hereby accept an appointment as a Probationary Teacher in St. Timothy School, for the period of one year provided I meet all the requirements of the Catholic School System.

Date: June 18, 1969

/s/ Madelyn C. Law
Signature of Applicant

I, Patrick J. Hunt, the pastor or administrator of said parish do hereby agree to employ Madelyn C. Law, of 45 Shenandoah Road Warwick as a teacher in City or Town St. Timothy, for the academic year Sept. 1969-June, 1970, at the salary of $6000.00
Name of School

Date: June 18, 1969

/s/ Patrick J. Hunt
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island –02903)

Plaintiffs' Exhibit No. 25

[Contract of Appellant Frank J. Shealey with St. Sebastian's School]

ST. SEBASTIAN — PROVIDENCE PARISH

TEACHER CONTRACT

I, Frank J. Shealey No. & Street 10 Elton Road—Box 306 City or Town West Yarmouth, Mass. 02673 do hereby accept an appointment as a Probationary Teacher in St. Sebastian School, for the period of Sept. 1969—June 1970 provided I meet all the requirements of the Catholic School System.

Date: 7-11-69

/s/ Frank J. Shealey
Signature of Applicant

I, T. Henry Barry, the pastor or administrator of said parish do hereby agree to employ Frank J. Shealey, of 10 Elton St - West Yarmouth as a teacher in City or Town St. Sebastian, for the academic year 1969-70, at the Name of School salary of $6000.00

Date: July 11, 1969

/s/ T. Henry Barry
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island —02903)

Plaintiffs' Exhibit No. 26

[Contract of Appellant John Earley
with St. Francis Xavier's School]

ST. FRANCIS XAVIER PARISH

TEACHER CONTRACT

I, John Earley No. & Street 5 Cumberland Road City or Town Riverside, Rhode Island zip do hereby accept an appointment as a Principal in St. Francis Xavier School, for the period of Sept. 1, 1969—Aug. 31, 1970 provided I meet all the requirements of the Catholic School System.

Date: 9/12/69

/s/ John R. Earley
Signature of Applicant

I, Rev. Manuel de Rego, the pastor of said parish do hereby agree to employ John Earley, of Cumberland Road Riverside, Rhode Island as a teacher in
City or Town
St. Francis Xavier, for the academic year September 1,
Name of School
1969 - Aug. 31, 1970, at a salary of 1200.00 State aid
6800.00 Church
$8000.00 Total

Date: 9/12/69

/s/ Rev. Manuel de Rego
Signature

(This agreement is binding between the appointee and the school indicated above. It should be completed in *triplicate;* one copy for the teacher, one copy for the parish records, and one copy to be forwarded to the Diocesan School Office, Cathedral Square, Providence, Rhode Island —02903)

Intervenor-Defendants' Exhibit A

[Curriculum of Roman Catholic Elementary Schools]

Grades	1	2	3	4	5	6	7	8
Religion	150	150	150	150	150	150	150	150
*Science				140	140	140	225	225
*Social Studies				140	140	140	225	225
*Foreign Language	100	100	120	140	140	140	150	150
Arithmetic	125	125	200	200	200	200	225	225
Language Arts:								
Reading	700	650	525	300	300	300	300	300
Handwriting, Spelling, English	200	280	285	280	280	280	225	225
Art and Music	120	150	150	150	150	150	150	150
Physical Education	100	100	100	100	100	100	100	100

In grades 4, 5, and 6

* These subjects may be taught 4 (four) days per week.

Supreme Court of the United States

Nos. 569 & 570, *October Term, 19* 70

John R. Earley et al.,

Appellants,

v.

Joan DiCenso et al.; and

William P. Robinson, Jr.,
Commissioner of Education of
State of Rhode Island, et al.,

Appellants,

v.

Joan DiCenso et al.

APPEALS from the United States District Court for the District of Rhode Island.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of one and one half hours is allotted for oral argument. The cases are set for oral argument immediately following Nos. 89 and 153.

November 9, 1970